

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Nonlawyer Assistance and Representation; Request for Comments

Perspectives from Representatives or Legal Assistance Providers

3. If you have worked as a nonlawyer representative in administrative adjudications, how long have you worked in this capacity? *I've been with my current Employer since 2006 in different capacities. I started assisting with filing claims @ 2010—2011, preparing cases for hearing under supervision, observing/participating in hearings under supervision and officially became a Lay Representative in 2014.*

Before which agency or agencies do you practice? *Benefits Counseling services with Department of Labor, Division of Coal Mine Workers Compensation, Lay Advocate work before the Office of Administrative Law Judges (ALJ), regarding Federal Black Lung Disability Claims.*

What tasks do you undertake as part of your representation? *As a Lay Advocate, communications between all parties, reviewing, preparing/submitting evidence, responding to evidence, preparing and representing Claimant before ALJ. All aspects of the claim before, during and after the hearing.*

How were you trained? *Training by staff within my organization and affiliates and a lot of hands on, learning as I go self-training-preparing.*

Are you required to re-certify regularly or seek ongoing training? *Within or organization we do continual training in forms of in clinic trainings, regional and national conferences, collaborations with similar organizations, government agencies, etc.*

Is training provided by the agency or by a sponsoring organization? *Not provided an agency. As previously stated, we offer and participate in trainings with similar organizations as ours regionally and nationally.*

Are you supervised by a lawyer in any capacity? *Not supervised but we have strong connections with lawyers that also do Federal Black Lung Claims. If an issue arises, we reach out to them for advice or to refer for services.*

4. If you have worked as a nonlawyer representative in administrative adjudications, what was the certification and oversight process from the agency? In your experience, was that process efficient and/or successful? *An attorney enters their appearance, bar number, etc. For a Lay Advocate, we enter our appearance and submit in motion form a "request to serve" in which we detail our experience, qualifications, citizenship, Claimants acknowledgement that they wish to be represented by us, etc..... with notation that the Claimant would be better represented by us than to proceed "pro se". Most Judges working with Federal Black Lung Disability Claims are familiar with our work. Once they review our request to serve, if agreeable they issue an order approving our representation. We are then expected to follow all regulations, requirements, procedures, deadlines, ethical standards, etc as an attorney would. We are held to the same standards of practice.*

5. If you have worked as a nonlawyer representative in administrative adjudications, have you felt that you were treated professionally and equally by others in the process? Was the government represented by a lawyer? *Yes, I feel I've always been treated professionally. For the most part I feel treated equally but more importantly, I feel the Claimant(s) have been treated equally and with respect. Yes, the government (DOL) is always represented by an attorney to ensure the integrity of the DOL.*

6. If you are a lawyer representing people in administrative adjudications, what are your experiences and interactions with nonlawyer representatives, if any? *N/A*

7. If you represent people in administrative adjudications, what are your experiences with agency rules and procedures regarding representation? In what ways could they be improved? *My experiences, the rules and procedures are straightforward and easy to follow. When first starting, it was overwhelming learning all the processes and requirements and not wanting to mistakenly do something wrong that would jeopardize that claim. It is a lot of information to absorb but now I feel I have a good understanding with several years of experience. As stated in question #4, all parties are held to the same standards of practice. This can and is a big undertaking for a non-attorney. Making sure you understand everything completely as you are held to those standards.*

Landscape of Relevant Agency Programs

8. Are you familiar with specific agency programs that encourage nonlawyer representation? Are these programs working to meet the demand of need for assistance and/or representation in administrative adjudications? If not, how might they be improved? *The Office of Administrative Law Judges cannot recommend someone to represent a Claimant but they do provide listings of available sources. Even with this, there is still a huge need. Way too many Claimants go into these hearings "pro se" or unrepresented. It is a major disadvantage to them as it is a complex legal system. They absolutely need someone on their side that understands these requirements, procedures and legal terms. They need someone that can explain it to them in an understandable way. Often, an attorney will not take a claim if they are not completely confident in an award leaving the Claimant unrepresented. Every Claimant deserves their day in court to be heard, win or lose. This is a place that a Lay Advocate can step in to ensure fairness and that that Claimant gets their day in court.*

9. Are there specific agency programs that could be expanded to encourage more forms of nonlawyer assistance and/or representation? *The organization I work for is a HRSA funded clinic. We do Lay Rep work because for us it's the right thing to do. We do not get any funding for this component nor do we charge our Claimants for this service. If an attorney represents a Miner/Survivor, whenever the claim is awarded and finalized, they can petition the Employer to reimburse their expenses. For a Lay Rep we cannot do that, therefore we would be required to ask the Claimant to pay. We do not do ask them to pay. They're more clinics like ours throughout the U.S. that receive HRSA funding. Funding to screen, diagnose, treat miners and to a limited extent do initial benefits counseling work. With the exception of a few, these Clinics do not offer Lay Advocate services. This, would be a great avenue to provide increased funding to these Clinics (if they choose) to help these organizations be able to offer these services. With this, there would need to be some form of national recruitment, training, educating, oversight and/or advisory to assist these Clinics in learning the processes and requirements and to feel confident in doing this type of work and to feel confident they are not placing themselves in any sort of liability concerns if they did not have appropriate training.*

10. Are you aware of studies or other data examining aspects of nonlawyer representation before federal agencies, beyond data that is publicly available through agency websites? *No*

11. What role can public- and private-sector groups play in increasing nonlawyer representation, and how should government agencies encourage such actions, if at all? *Answer to #9*