

August 30, 2024

Administrative Conference of the United States  
Office of the Chair  
1120 20th St NW  
Suite 706 South  
Washington, DC 20036

RE: Public Input on Nonlawyer Assistance/Representation in Agency Proceedings

Dear Office of the Chair of the Administrative Conference of the United States:

We write as researchers at Stanford University’s Deborah L. Rhode Center on the Legal Profession (“Rhode Center”) to offer input to the Administrative Conference of the United States (“ACUS”) on nonlawyer assistance and representation in federal agency proceedings.<sup>1</sup>

Two decades ago, the Rhode Center’s founder, Professor Deborah L. Rhode, observed that “[w]hat Americans want is more justice, not more lawyering.”<sup>2</sup> It has become clearer with every passing year that delivering justice to the public requires a radical reimagining of the delivery of legal services. More specifically, the public requires a robust ecosystem of service providers with varying levels of specialization, expertise, and cost, something other industries, including medicine—law’s “sister profession”—achieved years ago.

For more than fifty years, researchers have studied the benefits and perils of nonlawyer assistance. Here is what we know, in brief: Consumers want legal help, including from nonlawyers.<sup>3</sup> And qualified nonlawyers can be competent and effective. Indeed, a battery of studies, assessing different courts, at different times, and using different metrics, finds that trained nonlawyers can perform as well as, or sometimes better than, their J.D.-toting counterparts.<sup>4</sup> While *much more* can be learned from the use of nonlawyer providers in civil

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<sup>1</sup> Note that one of us, David Freeman Engstrom, is a public member of ACUS. This comment is submitted in his capacity as Co-Director of the Rhode Center, not in his capacity as an ACUS member.

<sup>2</sup> DEBORAH L. RHODE, ACCESS TO JUSTICE 81 (2004).

<sup>3</sup> See, e.g., NATALIE ANNE KNOWLTON, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., CASES WITHOUT COUNSEL: OUR RECOMMENDATIONS AFTER LISTENING TO THE LITIGANTS 29 (2016); Cayley Balser et al., *Leveraging Unauthorized Practice of Law Reform to Advance Access to Justice*, 18 L. J. FOR SOC. JUSTICE 66, 97–100 (2024); Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 STAN. J. CIV. RTS. & CIV. LIBERTIES 283, 289–97 (2020).

<sup>4</sup> See, e.g., MARY E. MCCLYMONT, GEO. JUST. LAB, NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS (2019); REBECCA L. SANDEFUR & THOMAS M. CLARKE, AM. B. FOUND., NAT’L CTR. FOR STATE CTS.

justice matters—and, as we explain below, we firmly believe that more and more rigorous study is urgently needed—researchers have achieved proof of concept on qualified nonlawyer assistance.

The decades-long history of nonlawyer practice in federal agency proceedings contributes to this consensus. Many agencies permit, and have long permitted, nonlawyers to assist individuals—and it appears that, in these agencies, lay advocates play a valuable role.<sup>5</sup>

With that level-setting in place, we would like to address two of the questions presented in the call for comment: (1) whether specific agency programs could be expanded to encourage more forms of nonlawyer assistance and/or representation, and (2) how government agencies can encourage public- and private-sector efforts to increase nonlawyer assistance and/or representation.

With respect to the former question, the answer is undoubtedly “Yes.” But in exploring exactly how and where nonlawyer assistance fits into agency proceedings, agencies should take a task-based (not necessarily an agency-based) perspective. The focus, in other words, should be on *what* help is needed, not just *where* help is needed.

The 2023 Legal Aid Interagency Roundtable (“LAIR”) report *Access to Justice in Federal Administrative Proceedings: Nonlawyer Assistance and Other Strategies*, offers important lessons. The report details a vibrant ecosystem of nonlawyer assistance across a range of federal agencies.<sup>6</sup> What emerges from this analysis is that, looking across a wide range of agency proceedings, there are common points at which nonlawyer assistance can benefit unrepresented individuals: determining eligibility, identifying issues, wayfinding through agency processes, completing forms, serving as intermediaries to digital platforms, giving advice on strategy, and providing representation at hearings.<sup>7</sup> This is no surprise; nor is it different from what we are seeing in nonlawyer legal service provider programs, whether in administrative or judicial contexts, across the country.<sup>8</sup>

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& PUB. WELFARE FOUND., ROLES BEYOND LAWYERS: EVALUATION OF THE NEW YORK CITY COURT NAVIGATORS PROGRAM (2016); DAVID KRAFT ET AL., FIVE YEAR REVIEW OF PARALEGAL REGULATION: RESEARCH FINDINGS. FINAL REPORT FOR THE LAW SOCIETY OF UPPER CANADA 6 (2012); HERBERT M. KRITZER, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK (1998); Sandefur, *supra* note 3, at 297–308; Jessica K. Steinberg et al., *Judges and the Deregulation of the Lawyer’s Monopoly*, 89 FORDHAM L. REV. 1315 (2021); Richard Moorhead et al., *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*, 37 LAW & SOC’Y REV. 765, 785–87 (2003); Nora Freeman Engstrom, *Effective Deregulation: A Look Under Hood of State Civil Courts*, JOTWELL, Oct. 31, 2022.

<sup>5</sup> Nora Freeman Engstrom, *Sunlight and Settlement Mills*, 86 N.Y.U. L. REV. 805, 844–45 (2011) (compiling evidence, including from the U.S. Patent Office and the Social Security Administration).

<sup>6</sup> WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN FEDERAL ADMINISTRATIVE PROCEEDINGS: NONLAWYER ASSISTANCE AND OTHER STRATEGIES (2023) [hereinafter LAIR].

<sup>7</sup> *Id.* at 6–10.

<sup>8</sup> *See, e.g., In Re South Carolina NAACP Housing Advocate Program*; the South Carolina State Conference of the NAACP; Marvin Neal; Robynne Campbell; De’Ontary Winchester, Petitioners, No. 2023-001608 (S.C. 2023); AM. JUSTICE MOVEMENT, <https://www.americanjusticemovement.org/> (last visited Aug. 29, 2024);

It follows that agencies should assess, both individually and jointly, opportunities to integrate trained nonlawyer advocates to assist on these tasks. This assessment can, and should, be done in tandem with process simplification, which the LAIR report acknowledges is the other side of this coin.<sup>9</sup> Agencies should take a “yes, and” approach. They should identify the types of proceedings, or the junctures within proceedings, where a mix of process simplification *coupled with* the deployment of appropriately trained nonlawyer advocates can be most effective. ACUS should work with agency partners and other stakeholders to develop best practices in how agencies can perform these critically important analyses.

On the second question regarding the role of public- and private-sector efforts to increase nonlawyer representation, we highlight two opportunities, although there are certainly many more. Both engage the academic community.

First, there are notable nonlawyer assistance programs embedded in institutions of higher education that are reimagining the traditional legal services clinic. At Villanova University, the Villanova Interdisciplinary Immigration Studies Training for Advocates (“VIISTA”) program, founded by Professor Michele Pistone, trains students to become immigration advocates.<sup>10</sup> The program is designed in three asynchronous fourteen-week modules, and students who have received course certificates are eligible under existing regulations to become Department of Justice accredited representatives.<sup>11</sup> The program is entirely online, and students range from recent college graduates to retirees (and everyone in between).

Another group of programs, developed by social innovation lab Innovation for Justice (i4J), is active in two states—Arizona and Utah—through the University of Arizona James E. Rogers College of Law and the University of Utah David Eccles School of Business.<sup>12</sup> The i4J model both trains law and graduate students to deliver legal services *and* trains nonlawyers to provide limited legal advice through their roles in community-based organizations. The community justice worker legal training consists of online, fully asynchronous, and self-paced 60- to 80-hour courses. To date, i4J has community justice worker projects in the areas of domestic violence, medical debt, and housing stability.<sup>13</sup>

By serving as a training hub for nonlawyer legal service providers, these models are far more scalable than traditional legal clinics. They embody the “teach a man to fish” approach. Both

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*Community Justice Worker Project*, ALASKA LEGAL SERV. CORP., <https://www.alsc-law.org/cjw/> (last visited Aug. 29, 2024).

<sup>9</sup> LAIR, *supra* note 6, at 13–17.

<sup>10</sup> VIISTA – Villanova Interdisciplinary Immigration Studies Training for Advocates, VILL. UNIV., <https://www1.villanova.edu/university/professional-studies/academics/professional-education/viista.html> (last visited Aug. 29, 2024).

<sup>11</sup> Michele R. Pistone, *The Crisis of Unrepresented Immigrants: Vastly Increasing the Number of Accredited Representatives Offers the Best Hope for Resolving It*, 92 FORDHAM L. REV. 893, 915 (2023).

<sup>12</sup> INNOVATION FOR JUSTICE (I4J), <https://www.innovation4justice.org/> (last visited Aug. 29, 2024).

<sup>13</sup> *Id.*

offer virtual, online training, and both operate with the blessing of governmental organizations—in the case of VIISTA, the Department of Justice; in the case of i4J, the Arizona and Utah Supreme Courts.

Drawing from the example set by VIISTA and i4J, ACUS can support more such programs, whether by helping to unlock funding, building and fostering partnerships between agencies and academic or community providers, or developing guidance on model programs for others to deploy.

A second, critically important opportunity for deeper engagement between federal agencies and academic institutions lies in facilitating empirical research efforts. The 2023 LAIR report noted that “our current understanding of people’s experiences and challenges navigating federal administrative proceedings is limited by the lack of rigorous data collection and research looking across federal programs from an access to justice lens.”<sup>14</sup> LAIR is right. We currently don’t know enough about how best to leverage nonlawyer assistance and representation in the wide range of contexts with substantial unmet civil legal need.

Fortunately, there are many university-based researchers who are studying (or who wish to study) the issue and who want to help. Many research teams would like to engage in rigorous research to shed light on what works and what doesn’t. Researchers seek to evaluate promising programs (such as those above), better understand *where exactly* full-fledged lawyers are necessary and where they aren’t, and assess how lawyers and nonlawyers (plus AI-powered technology) can work together to promote access, generate efficiencies, and reduce cost. Yet, many scholars—eager to perform this critical research—are stumped and stymied.

Apart from funding, the biggest obstacles to research of this sort are access to data and politics (including agency leaders’ desire to not rock the boat). We have first-hand experience. The Rhode Center has led Stanford research teams to Washington, D.C., to meet with agency officials—and has proposed rigorous, randomized evaluations of existing nonlawyer legal services programs, such as the immigration system’s accredited representative program. Sophisticated research designs of the sort we have presented to agency officials are the gold standard in empirical research—and they would substantially improve upon the mostly observational studies that currently dot the research landscape. However, though we’ve offered a world-class research team at no fiscal cost to the federal government, our efforts have foundered.

ACUS could help. Leveraging its role as a resource hub to the federal agency ecosystem, ACUS can—and should—facilitate connections between agencies and researchers that lead to increased data sharing and empirical study of nonlawyer assistance. By helping to foster robust collaborations, ACUS can help to move an exciting and still-emerging field of study onto a more evidence-based footing.

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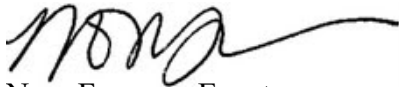
<sup>14</sup> LAIR, *supra* note 6, at 6.

We commend ACUS for giving priority to this important opportunity. Thank you for your attention and consideration.

Sincerely,



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