

Comment from Senior Fellow Russell R. Wheeler on *Nonlawyer Assistance and Representation*  
October 15, 2024

Two general comments:

First, I suggest clarifying whether the references to “representation” prior to the paragraph starting at line 27 are about representation in general or, as implied by the title, nonlawyer representation specifically. If the former, line 6 might say “Representation in adjudication proceedings, whether by lawyers or nonlawyers, and other forms of assistance . . .”

Second, the title refers to “assistance” before “representation,” and the key term in the early pages is “[non-lawyer] representation *and assistance*,” with frequent references to assistance. The recommendation itself, however, save for items 3 and 18, deals exclusively with non-lawyer representation.

Thus consider (a) altering the title to “Nonlawyer representation and assistance” (perhaps adding “in agency adjudication”), and (b) whether the recommendation needs to say more about assistance.

Additional suggestions:

P. line Comment

- 4 80 Line 79’s reference to “options for representation” could be read as directed to would-be representatives. To clarify, at 80, change “should provide information about” to “inform participants about”.
- 5 83 Items 1 and 2 concern rules governing and publicity about representation, but item 3, about assistance, says only that agencies should permit it under certain conditions. Should agencies also adopt establish rules governing—and inform participants about the availability of—assistance?
- 5 90 I am confused over the representative’s subject-matter qualifications.  
“b.” refers to “relevant subject matter,” which implies the general subject area of the adjudication. “c.” refers to the “subject matter of the adjudication,” which read in light of “b.” seems to suggest the specific topic of the instant adjudication, but then “d.” refers both to “matters relevant to the adjudication” and “c.”’s “subject matter of the adjudication.”  
Likewise, “e.” refers simply to “the adjudication,” but probably means the general area of the adjudication.
- 5 105 What if the individual has been reinstated? Suggest “is disbarred” (current status) rather than “has been disbarred” (which could have happened 20 years ago and the individual since reinstated).
- 6 112 Consider whether “historically underserved communities” connotes a more limited set of individuals than what p.3, line 48 refers to as “special populations”. If the p. 6 references are back to that p. 3 discussion, it should probably use the same terminology.
- 6 115 The reference to “training and continuing education” is confusing. Some read the terms to mean basically the same thing. Authors may have had in mind “orientation and continuing education.”

- 7 151 Query whether this brief reference to a potentially complicated and tricky effort needs some minimal qualification. For one thing, presenting data on “the outcomes, in aggregate, of cases in which parties are represented by non-lawyers” prompts the question “compared to what?”. And a comparison of outcomes (“participant prevails”?) of adjudications with lawyer representatives, non-lawyer representatives, and no-representatives can be misleading without some measure of strength of case. Hopeless cases may be less likely to get the scarce resource of representation.