



Nonlawyer Assistance and Representation

Committee on Adjudication

Draft Recommendation for Committee | October 16, 2024

1 Millions of people each year participate in administrative adjudicative proceedings to
2 access federal programs and resolve legal issues. Some adjudicative proceedings are simple
3 enough—or could be made simple enough—for people to navigate on their own. But others are
4 so complex, or involve such significant stakes, that people engaging with them would benefit
5 from representation by individuals with expertise in those programs or other forms of assistance.

6 Representation and other forms of assistance are particularly valuable, even in seemingly
7 straightforward adjudicatory proceedings, when they help people access relevant and accurate
8 information about agency programs, program eligibility, and information on how to correctly
9 complete forms and submit required information.¹ For example, while digital technologies, such
10 as online forms and virtual hearings, are effective strategies for increasing accessibility, they can
11 also act as a barrier for people who lack access to digital tools or lack the skills to navigate these
12 systems. Although these challenges can be present for anyone, those without representation may
13 become so overwhelmed that they give up and forego rights and benefits to which they are
14 entitled.² In other instances, errors can be exacerbated by a lack of representation and lead to
15 unfair outcomes.

16 Representation and other forms of assistance not only help participants in adjudicatory
17 proceedings but also benefit agencies. Without representation or assistance, an individual may be
18 less likely to properly and timely complete adjudicative requirements, which can delay

¹ WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN FEDERAL ADMINISTRATIVE PROCEEDINGS: NONLAWYER ASSISTANCE AND OTHER STRATEGIES 1 (2023) [hereinafter WH-LAIR REPORT].

² Pamela Herd, Donald Moynihan, & Amy Widman, Identifying and Reducing Burdens in Administrative Processes 41 (Dec. 5, 2023) (report to the Admin. Conf. of the U.S.).



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19 proceedings. Additionally, those without representation or assistance may require more support
20 from the agency, which can strain resources and reduce efficiency.³

21 Many people, however, particularly low-income people and members of historically
22 underserved communities, are unable to access representation or other forms of assistance.⁴ One
23 barrier to accessing representation or assistance is the critical shortage of affordable legal
24 services. This is a particular concern in remote and rural areas, where not only are lawyers
25 relatively scarce, but they may not be accessible to people who need them due to the long
26 distances.

27 Federal agencies have long innovated various ways to widen the pool of available
28 representatives and expand other forms of assistance. For example, many agencies currently
29 permit participants in agency adjudications to be represented by qualified or accredited
30 nonlawyers.⁵ In many instances, the decision maker (whether or not an administrative law judge)
31 makes an informal determination whether a representative is “qualified,” but some adjudicative
32 systems provide for a formal accreditation system to determine which nonlawyer representatives
33 are qualified to practice in those systems.

34 Examples of nonlawyers who represent or assist parties in agency proceedings include
35 other licensed professionals such as accountants, social workers, and paralegals; law students;
36 union representatives; human resources professionals; corporate officers; tribal advocates;

³ Admin. Conf. of the U.S., Recommendation 2016-6, *Self-Represented Parties in Administrative Proceedings*, 81 Fed. Reg. 94319 (Dec. 23, 2016); *see also*, Admin. Conf. of the U.S., Recommendation 86-1, *Nonlawyer Assistance and Representation*, 51 Fed. Reg. 25641 (July 16, 1986); WH-LAIR REPORT, *supra* note 1, at 19 (“Studies have shown that legal assistance improves legal outcomes.”).

⁴ *See* Amy Widman, *Nonlawyer Assistance and Representation* (Oct. 2, 2024) (draft report to the Admin. Conf. of the U.S.).

⁵ *See* 5 U.S.C. § 555(b) (“A person compelled to appear in person before an agency ... is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative.”). ACUS recognizes that there is an ongoing discussion about the best way to describe representatives who do not hold an active law license. For the purposes of this Recommendation, ACUS refers to this group as nonlawyer representatives because it is consistent with two prior ACUS recommendations and Model Rules of Representative Conduct, and the 2023 White House Legal Aid Interagency Roundtable. The decision to use the term nonlawyer is not meant to suggest any deficiencies in representation offered by such individuals, nor should it deter any individual agency from adopting a different term. ACUS encourages agencies to remain attentive to the ongoing discussion within the legal community about terminology in this area and to consider updating their usage accordingly.



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37 agency employees; community members; and family members. In administrative adjudication,
38 the border between representation and assistance can be blurry, even for the agency and its
39 decision makers. “Representation” is used particularly to denote that the individual is “standing
40 in the shoes” of the participant and can speak for that individual even when that person is not
41 present. Other forms of assistance that likely indicate representation include such activities as
42 counseling on specific applicability or signing official records.⁶ “Assistance” is broader, and
43 used to indicate all forms of help, including representation, that may be beneficial to a person in
44 dealing with an agency; this may include educating someone on process, counseling someone
45 about rights and remedies generally, and, in some cases, helping someone navigate a benefits
46 application.

47 Increasing availability of nonlawyer representation and other forms of assistance can be
48 particularly beneficial in meeting the needs of communities of special populations, including
49 veterans and servicemembers, members of tribal communities, people with disabilities, people
50 with criminal records, immigrants, and disaster survivors.⁷ A member of one of these
51 communities often benefits from representation and assistance provided by nongovernmental
52 organizations, advocacy groups, and other members of the private sector already operating to
53 meet the needs and face the challenges within those communities. These community ties function
54 not only as a source of trust but also a deep source of knowledge and expertise that can bear on
55 representation and other forms of assistance. That trust can in turn encourage trust in public
56 institutions and adjudicative proceedings more generally. Agencies can engage with such groups
57 to help increase availability and awareness of nonlawyer representation and assistance in these
58 communities.

59 There are barriers to increasing availability of nonlawyer representation and other
60 assistance, including barriers that agencies may be able to address through their rules regarding
61 representation and assistance. Agencies vary in their requirements, oversight, and encouragement
62 of such representation. Overly burdensome requirements for representatives to establish their

⁶ Admin. Conf. of the U.S., Recommendation 86-1, *Nonlawyer Assistance and Representation*, 51 Fed. Reg. 25641 (July 16, 1986) (FOOTNOTE 2).

⁷ See WH-LAIR REPORT, *supra* note 1, at vii.



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63 qualifications or to become accredited to practice before particular agencies can reduce the
64 availability of representatives. When agencies do not affirmatively inform participants of the
65 availability of such representation or other forms of assistance, participants may not be aware of
66 these resources.

67 In 1986, ACUS recommended that agencies permit and encourage nonlawyer
68 representation and assistance.⁸ More recent recommendations encourage agencies to allow
69 participants in many adjudications “to be represented by a lawyer or a lay person with relevant
70 expertise”⁹ and establish “rules authorizing accredited or qualified nonlawyer representatives to
71 practice before the agency.”¹⁰ This Recommendation expands on the Conference’s previous
72 recommendations by identifying best practices for incorporating and increasing representation
73 and assistance by permitting broader practice by nonlawyers in different types of adjudicative
74 systems and providing guidance to make processes governing nonlawyer representation and
75 assistance more accessible and transparent.

RECOMMENDATION

Availability of Nonlawyer Representation and Assistance

- 76 1. To increase the availability of representation for participants in their adjudications,
77 agencies should establish rules authorizing qualified (see paragraphs 4-5) or accredited
78 (see paragraphs 6-8) nonlawyer representatives to practice before them.
- 79 2. To improve awareness of options for representation, including by qualified or accredited
80 nonlawyers, agencies should provide information about such options early and
81 throughout adjudications, including at levels of decision-making prior to an opportunity
82 for a hearing.

⁸ Admin. Conf. of the U.S., Recommendation 86-1, *Nonlawyer Assistance and Representation*, 51 Fed. Reg. 25641 (July 16, 1986).

⁹ Admin. Conf. of the U.S., Recommendation 2023-5, *Best Practices for Adjudication Not Involving an Evidentiary Hearing*, 89 Fed. Reg. 1509 (Jan. 10, 2024).

¹⁰ Admin. Conf. of the U.S., Recommendation 2023-6, *Identifying and Reducing Burdens on the Public in Administrative Proceedings*, 89 Fed. Reg. 1511 (Jan. 10, 2024). In 2024, ACUS published Model Rules of Representative Conduct.



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- 83 3. Agencies should generally permit other forms of assistance, such as that provided by
84 friends, family members, or other individuals, unless there is reason to exclude such an
85 individual from a proceeding (e.g., causing disruption or adversely impacting testimony).

Qualifications of Nonlawyer Representatives

- 86 4. Agencies should establish the qualifications required for nonlawyer representatives.
87 Agencies should consider the following factors, as relevant, when determining whether a
88 nonlawyer is qualified to represent a party in an agency proceeding:
- 89 a. The representative's relationship to the represented participant;
 - 90 b. The representative's knowledge of the relevant subject matter;
 - 91 c. The representative's experience, if any, relating to the subject matter of the
92 adjudication;
 - 93 d. The representative's education or training in matters relevant to the
94 adjudication, including whether the representative has passed an examination
95 or obtained a professional license relevant to the subject matter of the
96 adjudication;
 - 97 e. The representative's expertise or skills in relation to the adjudication;
 - 98 f. Whether there is any indication that the representative will not be willing or
99 able to act in the best interests of the represented participant;
 - 100 g. Whether the representative has a pending charge or has been convicted of a
101 crime that reflects adversely on the representative's fitness to serve as a
102 representative before the agency; and
 - 103 h. Whether the representative has knowingly disobeyed or attempted to disobey
104 agency rules or adjudicator directions, or has assisted others in doing so.
- 105 5. Agencies should clarify that an individual who has been disbarred from practicing law is
106 not qualified to serve as a nonlawyer representative before the agency.

Accreditation



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- 107 6. The following types of agencies should consider developing and implementing formal
108 accreditation programs for nonlawyer representatives to help ensure the quality and
109 competency of representation in their adjudicative proceedings:
- 110 a. Agencies conducting adversarial adjudications with evidentiary hearings;
 - 111 b. Agencies that adjudicate a high volume of cases involving historically
112 underserved communities; and
 - 113 c. Agencies with adjudications that involve specialized or technical subject
114 matter.
- 115 7. Agencies should consider requiring training and continuing education as a part of their
116 accreditation program, either by providing such training or continuing education directly
117 or by working with organizations that employ, train, or mentor nonlawyer
118 representatives. However, agencies should regularly review the requirements of their
119 accreditation programs to ensure they are adequate without adding additional,
120 unnecessary burdens.
- 121 8. Agencies should dedicate adequate funding and other resources to their programs for
122 accrediting, training, and regulating nonlawyer representatives who practice before them,
123 to ensure availability of representation and reduce wait times for accreditation.

Oversight and Enforcement

- 124 9. Agencies should establish rules to govern the conduct and ethical obligations of
125 nonlawyer representatives. Agencies should consider adopting in whole or in part the
126 Model Rules of Representative Conduct.
- 127 10. Agencies' rules should establish procedures for reviewing allegations or evidence of
128 noncompliance by nonlawyer representatives with their rules of conduct; adjudicating
129 alleged violations by nonlawyer representatives; and imposing sanctions on nonlawyer
130 representatives found to have violated the rules of conduct. Agencies should also ensure
131 their rules include procedures for enforcing such sanctions.
- 132 11. Agencies should provide for administrative review of any sanctions imposed on
133 nonlawyer representatives for violation of relevant conduct rules.



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- 134 12. Agencies should publicly disclose on their websites the names of nonlawyer
135 representatives who have been sanctioned.

Coordination and Collaboration

- 136 13. Agencies with overlapping subject matters, similar adjudication systems, or similar
137 regulatory structures for nonlawyer representation should identify opportunities for
138 interagency coordination of accreditation or training programs for nonlawyer
139 representatives, to save resources and promote consistency.
- 140 14. When authorized by law, agencies should expand grant funding opportunities for
141 nonprofit organizations that employ, train, or mentor nonlawyer representatives.
- 142 15. Agencies should work with law school clinics to expand programs allowing law students
143 to serve as nonlawyer representatives under the supervision of lawyers.
- 144 16. Agencies should engage with community-based organizations, nongovernmental
145 organizations, advocacy groups, and other organizations that that can assist in building
146 trust among participants and improve nonlawyer representation by bringing knowledge of
147 and expertise in issues facing those communities.
- 148 17. Agencies should collaborate with state bar associations and other relevant licensing
149 authorities to reduce the effect that state prohibitions against unauthorized practice of law
150 have on the ability of nonlawyers to represent parties before them.

Data

- 151 18. Agencies should track data on representation, including by nonlawyers, to assess whether
152 their rules and procedures regarding nonlawyer representation and other forms of
153 assistance are meeting the needs of their adjudications and identify opportunities for
154 expanding access to representation. Such data should include, at a minimum, the type and
155 number of nonlawyer representatives; the outcomes, in aggregate, of cases in which
156 parties are represented by nonlawyers; the number of pending applications for
157 accreditation; and average wait time for applications to be reviewed. Such data should be
158 made publicly available and regularly updated.