



Nonlawyer Assistance and Representation in Agency Adjudications

Committee on Adjudication

Proposed Recommendation from Committee | October 30, 2024

Commented [AC1]: Proposed Amendment from the Committee on Adjudication:

The Committee voted to replace the original title of this Recommendation (*Nonlawyer Assistance and Representation*).

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 many are
4 so complex, or involve such significant stakes, that people engaging with them benefit from
5 representation by individuals with expertise in those programs or assistance from individuals
6 who can help them navigate the proceedings.

7 It is helpful to distinguish between “representation” and “assistance.” Representation is
8 used to denote that the individual is “standing in the shoes” of the participant and can speak for
9 that individual even when they are not present. Other activities that likely indicate representation
10 include counseling on eligibility for an agency program or signing official records.¹ “Assistance”
11 is broader and used to indicate many other forms of help that may be beneficial to a person in
12 dealing with an agency; this may include educating someone on process, counseling someone
13 about rights and remedies generally, and, in some cases, helping someone navigate a form or
14 benefits application. In most cases, representation will include various forms of assistance, but
15 assistance does not include representation.

16 Representation and assistance, whether by lawyers or nonlawyers, are particularly
17 valuable, even in seemingly straightforward adjudicatory proceedings, when they help people
18 access relevant and accurate information about agency programs, program eligibility, and

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



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19 information on how to correctly complete forms and submit required information.² For example,
20 although the use of digital technologies, such as online forms and virtual hearings, is an effective
21 strategy for increasing accessibility, it can also act as a barrier for people who lack access to
22 digital tools or lack the skills to navigate these systems. Such challenges can be present for
23 anyone, but those lacking representation or assistance may become so overwhelmed that they
24 give up and forego rights and benefits to which they are entitled.³ In other instances, errors can
25 be exacerbated by a lack of representation or assistance and lead to unfair outcomes.

26 Representation and assistance not only help participants in adjudicatory proceedings but
27 also benefit agencies. Without representation or assistance, an individual may be less likely to
28 properly and timely complete adjudicative requirements, which can delay proceedings.
29 Additionally, those without representation or assistance may require more support from the
30 agency, including the adjudicator, which can strain resources and reduce efficiency.⁴

31 Many people, however, particularly low-income people and members of historically
32 underserved communities, are unable to access representation or assistance.⁵ One barrier is the
33 critical shortage of affordable legal services. This concern is particularly acute in remote and
34 rural areas, where not only are lawyers relatively scarce and may not have relevant expertise, but
35 they may not be accessible to people who need them due to the long distances required to visit in
36 person, inability to consult virtually, and other barriers.

37 Federal agencies have long innovated various ways to widen the pool of available
38 representatives and expand assistance. For example, many agencies currently permit participants

² WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN FEDERAL ADMINISTRATIVE PROCEEDINGS: NONLAWYER ASSISTANCE AND OTHER STRATEGIES 1 (2023) [hereinafter WH-LAIR REPORT].

³ 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.).

⁴ 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 2, at 19 (“Studies have shown that legal assistance improves legal outcomes.”).

⁵ *See* Amy Widman, *Nonlawyer Assistance and Representation* (Oct. 2, 2024) (draft report to the Admin. Conf. of the U.S.).



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39 in agency adjudications to be represented by qualified or accredited nonlawyers.⁶ In many
40 instances, the decision maker (whether or not an administrative law judge) makes an informal
41 determination whether a representative is “qualified,” but some adjudicative systems provide for
42 a formal accreditation system to determine which nonlawyer representatives are qualified to
43 practice in those systems.⁷

44 Increasing availability of nonlawyer representation and assistance can be particularly
45 beneficial in meeting the needs of communities of special populations, including veterans and
46 servicemembers, members of tribal communities, people with disabilities, people with criminal
47 records, immigrants, and disaster survivors.⁸ Members of such communities often benefit from
48 representation and assistance provided by nongovernmental organizations, advocacy groups, and
49 others already operating to meet the needs and face the challenges within such communities.
50 These community ties function as a way to build trust among participants and serve as a deep
51 source of knowledge and expertise that can bear on representation and assistance. That trust can
52 in turn inspire public confidence in agency adjudication. Agencies can engage with such groups
53 to help increase availability and awareness of nonlawyer representation and assistance in these
54 communities.

⁶ 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.”). Examples of nonlawyers who represent or assist parties in agency proceedings include other licensed professionals such as accountants, social workers, and paralegals; law students; union representatives; human resources professionals; corporate officers; tribal advocates; agency employees; community members; and family members. The Conference 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, the Conference refers to this group as “nonlawyer representatives” because it is consistent with two prior recommendations of the Conference, the *Model Rules of Representative Conduct*, and the 2023 report of the White House Legal Aid Interagency Roundtable. Use of 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. The Conference 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.

⁷ Federal law may specify criteria or processes that an agency must use in determining whether a nonlawyer representative is qualified to represent participants in proceedings before it. See, e.g., 5 U.S.C. § 500(c) (providing that individuals duly qualified to practice as a certified public accountant in a state may represent participants in Internal Revenue Service proceedings upon filing with the agency a written declaration as specified by law).

⁸ See WH-LAIR REPORT, *supra* note 2, at vii.



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55 There are barriers to increasing availability of nonlawyer representation and assistance,
56 including barriers that agencies may be able to address through their rules regarding
57 representation and assistance. Agencies vary in their requirements, oversight, and encouragement
58 of such representation and assistance. Overly burdensome requirements for representatives to
59 establish their qualifications or to become accredited to practice before particular agencies can
60 unnecessarily reduce the availability of nonlawyer representation. When agencies do not
61 affirmatively inform participants of the availability of such representation or assistance,
62 participants may not be aware of these resources.

63 The issue of nonlawyer representation and assistance has been a long-standing concern of
64 the Administrative Conference. As early as 1986, the Conference recommended that agencies
65 permit and encourage nonlawyer representation and assistance because of the substantial number
66 of individuals needing or desiring representation and assistance in filling out forms, filing claims,
67 and appearing in agency proceedings who were unable to afford or otherwise obtain such
68 representation or assistance by lawyers.⁹ In 2023, the Conference adopted two recommendations
69 addressing agency adjudicatory processes that encourage agencies to allow participants in many
70 adjudications “to be represented by a lawyer or a lay person with relevant expertise”¹⁰ and to
71 establish “rules authorizing accredited or qualified nonlawyer representatives to practice before
72 the agency.”¹¹ And in 2024, the Conference’s Chair released *Model Rules of Representative*
73 *Conduct*, that, among other topics, address the qualifications and conduct of nonlawyer
74 representatives.¹²

75 This Recommendation expands on the Conference’s previous recommendations by
76 identifying best practices for incorporating and increasing representation and assistance by
77 permitting broader practice by nonlawyers in different types of adjudicative systems and

⁹ Admin. Conf. of the U.S., Recommendation 86-1, *Nonlawyer Assistance and Representation*, 51 Fed. Reg. 25641 (July 16, 1986).

¹⁰ 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).

¹¹ 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).

¹² ADMIN. CONF. OF THE U.S., MODEL RULES OF REPRESENTATIVE CONDUCT (2024). The Model Rules were developed by a working group of public- and private-sector representatives.



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78 providing guidance to make processes governing nonlawyer representation and assistance more
79 accessible and transparent.

RECOMMENDATION

Availability of Nonlawyer Assistance

- 80 1. Agencies should permit nonlawyers—including friends, family members, and other
81 individuals—to assist participants throughout the adjudicative process. For example,
82 agencies should freely allow nonlawyers to help participants navigate and complete
83 forms, obtain necessary documents and records, and accompany participants to
84 interviews and hearings for moral support, unless there is reason to exclude such
85 individuals (e.g., allowing participation in an interview or hearing could cause a
86 disruption or adversely impact testimony).
- 87 2. Agencies should encourage and expand opportunities for nonlawyer assistance through
88 programs that authorize, educate, and/or certify individuals to provide participants with
89 information, support, and dedicated assistance, either by staffing and operating such
90 programs directly or providing guidance and grant funding to nonprofit organizations.

Availability of Nonlawyer Representation

- 91 3. To increase the availability of representation for participants in their adjudications,
92 agencies should establish rules authorizing qualified (see paragraphs 4-5) and, as
93 appropriate, accredited (see paragraphs 6-9) nonlawyer representatives to practice before
94 them.

Qualifications of Nonlawyer Representatives

- 95 4. Agencies should establish reasonable qualifications required for nonlawyer
96 representatives to practice before them. When determining whether a nonlawyer is
97 qualified to represent a participant in an agency proceeding, agencies should consider the
98 factors listed in the *Model Rules of Representative Conduct*, such as the representative's



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- 99 relationship to the participant; their knowledge, expertise, or skill; and their fitness to
100 serve.
- 101 5. Agencies should provide that an individual who is disbarred from practicing law is not
102 permitted to serve as a nonlawyer representative before the agency.

Accreditation of Nonlawyer Representatives

- 103 6. In addition to establishing qualifications for nonlawyer representatives, the following
104 types of agencies should consider developing and implementing accreditation programs
105 for nonlawyer representatives to help ensure the quality and competency of
106 representation in their adjudicative proceedings:
- 107 a. Agencies conducting adversarial adjudications with evidentiary hearings;
 - 108 b. Agencies that adjudicate a high volume of cases involving historically
109 underserved communities; and
 - 110 c. Agencies with adjudications that involve specialized or technical subject matter.
- 111 7. Agencies with accreditation programs should consider requiring initial and continuing
112 education for nonlawyer representatives, either by providing such education directly or
113 by working with organizations that employ, educate, or mentor nonlawyer
114 representatives.
- 115 8. Agencies should regularly review the requirements of their accreditation programs to
116 ensure they are beneficial without adding unnecessary burdens.
- 117 9. Agencies with programs for accrediting, educating, and regulating nonlawyer
118 representatives who practice before them should have dedicated funding to ensure
119 availability of representation and reduce wait times for accreditation.

Oversight and Enforcement

- 120 10. Agencies should establish rules to govern the conduct and ethical obligations of
121 nonlawyer representatives. Agencies should consider adopting in whole or in part the
122 *Model Rules of Representative Conduct*.



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- 123 11. Agencies should establish procedures for reviewing allegations or evidence of
124 noncompliance by nonlawyer representatives with their rules of conduct; adjudicating
125 allegations that nonlawyer representatives have violated those rules; and imposing
126 sanctions on nonlawyer representatives found to have violated the rules of conduct.
127 Agencies should also ensure they have procedures for enforcing such sanctions.
128 12. Agencies should provide for administrative review of any sanctions imposed on
129 nonlawyer representatives for violation of relevant conduct rules.

Transparency with Regard to Representation and Assistance

- 130 13. To improve participants' awareness of options for representation and assistance,
131 including by qualified or accredited nonlawyers, agencies should inform participants
132 about such options early and throughout adjudications, including at levels of decision-
133 making prior to an opportunity for a hearing and by posting relevant information on their
134 websites.
135 14. Agencies should publish the following in the *Code of Federal Regulations* and on their
136 websites:
137 a. Rules prescribing the qualifications required for nonlawyer representatives;
138 b. Rules for accrediting, educating, and regulating nonlawyer representatives, for
139 agencies with formal accreditation programs; and
140 c. Rules governing the conduct and ethical obligations of nonlawyer representatives,
141 as well as procedures for adjudicating alleged violations of these rules and
142 imposing sanctions.
143 15. To inform and protect participants, agencies should publish on their websites the names
144 of nonlawyer representatives who have been sanctioned, the nature of the sanction, and,
145 as relevant, the specified period of the sanction. Agencies may omit certain information
146 regarding the nature of the violation or sanction as necessary to preserve recognized
147 privacy interests.



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Coordination and Collaboration with Regard to Representation and Assistance

- 148 16. Agencies with overlapping subject matters, similar adjudication systems, or similar
149 regulatory structures for nonlawyer representation should identify opportunities for
150 interagency coordination of accreditation or education programs for nonlawyer
151 representatives, to save resources and promote consistency.
- 152 17. When authorized by law, agencies should expand grant funding opportunities for
153 nonprofit organizations that employ, educate, or mentor nonlawyers who represent or
154 assist participants.
- 155 18. Agencies should work with law and other professional school clinics to expand programs
156 that allow students to represent participants under the supervision of lawyers or other
157 accredited professionals or provide assistance to participants.
- 158 19. Agencies should engage with community-based organizations, nongovernmental
159 organizations, advocacy groups, and other organizations that can assist in building trust
160 among participants and improve nonlawyer representation and assistance by bringing
161 knowledge of and expertise in issues facing those communities.
- 162 20. Agencies should collaborate with state bar associations and other relevant licensing
163 authorities to reduce the effect that state prohibitions against unauthorized practice of law
164 may have on the ability of nonlawyers to represent parties before them.

Data

- 165 21. Agencies should gather and maintain baseline comparative data on representation,
166 including by nonlawyers, to (1) help agencies and others assess whether rules and
167 procedures regarding nonlawyer representation are achieving agency goals in making
168 such representation available and accessible; and (2) identify opportunities for expanding
169 access to representation. Such data should include, at a minimum, the type and number of
170 nonlawyer representatives; the outcomes, in aggregate, of cases in which parties have no
171 representation, lawyer representation, or nonlawyer representation; the number of
172 pending applications for accreditation; and average wait time for applications to be



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173 reviewed. Agencies should make data regarding representation publicly available and
174 regularly update it.

175 22. To the extent practicable, agencies should gather and maintain data on assistance,
176 including by nonlawyers, to assess participants' experiences with and access to various
177 forms of assistance. Agencies may collect such information by, for example, surveying
178 participants regarding whether they received any assistance, the type of assistance they
179 received, and the effectiveness of such assistance. Agencies may also require grantees, as
180 a condition of their grants, to report on the types of assistance they provide, the number
181 of participants they assist, and the outcomes of such assistance (e.g., the individual
182 applied for or received benefits). Agencies should make data on assistance publicly
183 available and regularly update it.