



Administrative Conference Recommendation 2024-7

Nonlawyer Assistance and Representation in Agency Adjudications

Adopted December 12, 2024

Millions of people each year participate in administrative adjudicative proceedings to access federal programs and resolve legal issues. Some adjudicative proceedings are simple enough—or could be made simple enough—for people to navigate on their own, and the Administrative Conference has identified best practices for reducing administrative burdens and assisting self-represented parties.¹ But many adjudicative proceedings are so complex, or involve such significant stakes, that people engaging with them benefit from representation by individuals with expertise in those programs or assistance from individuals who can help them navigate the proceedings.

It is helpful to distinguish between “representation” and “assistance.” Representation is used to denote that the individual is “standing in the shoes” of the participant and can speak for that individual even when they are not present. Other activities that likely indicate representation include counseling on eligibility for an agency program or signing official records.² “Assistance” is broader and used to indicate many other forms of help that may be beneficial to a person in dealing with an agency; this may include educating someone on process, counseling someone about rights and remedies generally, and, in some cases, helping someone navigate a form or benefits application. In most cases, representation will include various forms of assistance, but assistance does not include representation.

Representation and assistance, whether by lawyers or nonlawyers, are particularly valuable, even in seemingly straightforward adjudicatory proceedings, when they help people

¹ See 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); Admin. Conf. of the U.S., Recommendation 2016-6, *Self-Represented Parties in Administrative Proceedings*, 81 Fed. Reg. 94,319 (Dec. 23, 2016).

² Admin. Conf. of the U.S., Recommendation 86-1, *Nonlawyer Assistance and Representation*, 51 Fed. Reg. 25,641, 25,642 n.2 (July 16, 1986).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

access relevant and accurate information about agency programs, program eligibility, and information on how to complete forms correctly and submit required information.³ For example, although the use of digital technologies, such as online forms and virtual hearings, is an effective strategy for increasing accessibility, it can also act as a barrier for people who lack access to digital tools or lack the skills to navigate these systems. Such challenges can be present for anyone, but those lacking representation or assistance may become so overwhelmed that they forgo rights and benefits to which they are entitled.⁴ More generally, a lack of representation or assistance often can lead to incorrect or unfair outcomes.

Representation and assistance not only help participants in adjudicatory proceedings but also benefit agencies. Without representation or assistance, an individual may be less likely to properly and timely complete adjudicative requirements, which can delay proceedings. Additionally, those without representation or assistance may require more support from the agency, including the adjudicator, which can strain resources and reduce efficiency.⁵

Many people, however, particularly low-income people and members of historically underserved communities, are unable to access representation or assistance.⁶ One barrier is the shortage of affordable legal services. This concern is particularly acute in remote and rural areas, where not only are lawyers relatively scarce and may not have relevant expertise, but they may not be accessible to people who need them due to the long distances required to visit in person, inability to consult virtually, and other barriers.

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

³ WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN FEDERAL ADMINISTRATIVE PROCEEDINGS: NONLAWYER ASSISTANCE AND OTHER STRATEGIES 1 (2023) [hereinafter WH-LAIR REPORT].

⁴ 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.).

⁵ Recommendation 2016-6, *supra* note 1, at 94,320; *see also*, Recommendation 86-1, *supra* note 2, at 25,642; WH-LAIR REPORT, *supra* note 3, at 19 (“Studies show that legal assistance improves legal outcomes.”).

⁶ *See* Amy Widman, Nonlawyer Assistance and Representation (Dec. 9, 2024) (report to the Admin. Conf. of the U.S.).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

in agency adjudications to be represented by qualified or accredited nonlawyers.⁷ In many instances, the decision maker (whether or not an administrative law judge) makes an informal determination whether a representative is “qualified,” but some adjudicative systems provide for a formal accreditation system to determine which nonlawyer representatives are qualified to practice in those systems.⁸

Increasing availability of nonlawyer representation and assistance can be particularly beneficial in meeting the needs of communities of special populations, including veterans and servicemembers, members of tribal communities, people with disabilities, people with criminal records, immigrants, and disaster survivors.⁹ Members of such communities often benefit from representation and assistance provided by nongovernmental organizations, advocacy groups, and others already operating to meet the needs and face the challenges within such communities. These community ties function as a way to build trust among participants and serve as a deep source of knowledge and expertise that can bear on representation and assistance. That trust can in turn inspire public confidence in agency adjudication. Agencies can engage with such groups to help increase availability and awareness of nonlawyer representation and assistance in these communities.

⁷ 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.

⁸ 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).

⁹ See WH-LAIR REPORT, *supra* note 3, at vii.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

There are barriers to increasing availability of nonlawyer representation and assistance, including barriers that agencies may be able to address through their rules regarding representation and assistance. Agencies vary in their requirements, oversight, and encouragement of such representation and assistance. While reasonable requirements for qualification or accreditation, as well as continuing education, help ensure the quality and competence of representation, overly burdensome requirements can unnecessarily reduce the availability of nonlawyer representation. When agencies do not affirmatively inform participants of the availability of such representation or assistance, participants may not be aware of these resources.

The issue of nonlawyer representation and assistance has been a long-standing concern of the Conference. As early as 1986, the Conference recommended that agencies permit and encourage nonlawyer representation and assistance because of the substantial number of individuals needing or desiring representation and assistance in filling out forms, filing claims, and appearing in agency proceedings who were unable to afford or otherwise obtain such representation or assistance by lawyers.¹⁰ In 2023, the Conference adopted two recommendations addressing agency adjudicatory processes that encourage agencies to allow participants in many adjudications “to be represented by a lawyer or a lay person with relevant expertise”¹¹ and to establish “rules authorizing accredited or qualified nonlawyer representatives to practice before the agency.”¹² And in 2024, the Conference’s Chair released *Model Rules of Representative Conduct*, that, among other topics, address the qualifications and conduct of nonlawyer representatives.¹³

This Recommendation expands on the Conference’s previous recommendations by identifying best practices for incorporating and increasing representation and assistance by

¹⁰ Recommendation 86-1, *supra* note 2, at 25,642.

¹¹ 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).

¹² Recommendation 2023-6, *supra* note 1, at 1513.

¹³ 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.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

permitting broader practice by nonlawyers in different types of adjudicative systems and providing guidance to make processes governing nonlawyer representation and assistance more accessible and transparent.

RECOMMENDATION

Availability of Nonlawyer Assistance

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

Availability of Nonlawyer Representation

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

Qualifications of Nonlawyer Representatives

4. Agencies should establish reasonable qualifications required for nonlawyer representatives to practice before them, without adding unnecessary burdens. When determining whether a nonlawyer is qualified to represent a participant in an agency



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

proceeding, agencies should consider the factors listed in the *Model Rules of Representative Conduct*, such as the representative's relationship to the participant; their knowledge, expertise, experience, or skill; and their fitness to serve.

5. Agencies should have a process for determining whether an individual who has been disbarred should thereby be disqualified from serving as a nonlawyer representative in a particular case.

Accreditation of Nonlawyer Representatives

6. In addition to establishing qualifications for nonlawyer representatives, the following types of agencies should consider developing and implementing accreditation programs for nonlawyer representatives to help ensure the quality and competency of representation in their adjudicative proceedings:
 - a. Agencies conducting adversarial adjudications with evidentiary hearings;
 - b. Agencies that adjudicate a high volume of cases involving historically underserved communities; and
 - c. Agencies with adjudications that involve specialized or technical subject matter.
7. Agencies with accreditation programs should consider implementing reasonable initial and continuing education requirements for nonlawyer representatives, either by providing such education directly or by working with organizations that employ, educate, or mentor nonlawyer representatives. In doing so, agencies should avoid imposing education requirements that unnecessarily burden representatives.
8. Agencies regularly should review the requirements of their accreditation programs to ensure they are reasonable and beneficial without adding unnecessary burdens.
9. Agencies with programs for accrediting, educating, and regulating nonlawyer representatives who practice before them should have funding to ensure availability of representation and reduce wait times for accreditation.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Oversight and Enforcement

10. Agencies should establish rules to govern the conduct and ethical obligations of nonlawyer representatives.
11. Agencies should establish procedures for reviewing allegations or evidence of noncompliance by nonlawyer representatives with their rules of conduct; adjudicating allegations that nonlawyer representatives have violated those rules; and imposing sanctions on nonlawyer representatives found to have violated the rules of conduct. Agencies should also ensure they have procedures for enforcing such sanctions.
12. Agencies should provide for administrative review of any sanctions imposed on nonlawyer representatives for violation of relevant conduct rules.
13. Agencies may consider using the *Model Rules of Representative Conduct* as a resource in establishing the rules and procedures outlined in paragraphs 10–12.

Transparency with Regard to Representation and Assistance

14. To improve participants' awareness of options for representation and assistance, including by qualified or accredited nonlawyers, agencies should inform participants about such options early and throughout adjudications, including at levels of decision making prior to an opportunity for a hearing and by posting relevant information on their websites.
15. Agencies should publish the following in the *Code of Federal Regulations* and on their websites:
 - a. Rules prescribing the qualifications required for nonlawyer representatives;
 - b. Rules for accrediting, educating, and regulating nonlawyer representatives, for agencies with formal accreditation programs; and
 - c. Rules governing the conduct and ethical obligations of nonlawyer representatives, as well as procedures for adjudicating alleged violations of these rules and imposing sanctions.
16. To inform and protect participants, agencies should publish on their websites the names of nonlawyer representatives who have been sanctioned, the nature of the sanction, and,



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

as relevant, the specified period of the sanction. Agencies may omit certain information regarding the nature of the violation or sanction as necessary to preserve recognized privacy interests. Agencies should consider establishing, when appropriate, procedures for removing information about sanctioned representatives from their websites after a certain period of time has elapsed or a sanction is no longer in effect.

Coordination and Collaboration with Regard to Representation and Assistance

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

Data

22. Agencies should gather and maintain baseline comparative data on representation, including by nonlawyers, to (1) help agencies and others assess whether rules and procedures regarding nonlawyer representation are achieving agency goals in making



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

such representation available and accessible; and (2) identify opportunities for expanding access to representation. Such data should include, at a minimum, the type and number of nonlawyer representatives; the outcomes, in aggregate, of cases in which parties have no representation, lawyer representation, or nonlawyer representation; the number of pending applications for accreditation; and average wait time for applications to be reviewed. Agencies should make data regarding representation publicly available, including on their websites, and regularly update it.

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