



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Nonlawyer Assistance and Representation in Agency Adjudications

Committee on Adjudication

Proposed Recommendation for Plenary | December 12, 2024

Proposed Amendments

This document displays manager’s amendments (with no marginal notes) and additional amendments from the Council and Conference members (with sources shown in the margin).

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.

¹ 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) (FOOTNOTE 2).

DRAFT December 9, 2024

Commented [CoA1]: Proposed Amendment from the Committee on Adjudication:

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



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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
19 information on how to ~~correctly complete forms correctly~~ and submit required information.² For
20 example, although the use of digital technologies, such as online forms and virtual hearings, is an
21 effective strategy for increasing accessibility, it can also act as a barrier for people who lack
22 access to digital tools or lack the skills to navigate these systems. Such challenges can be present
23 for 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. More~~
26 ~~generally, a lack of representation or assistance often can lead to incorrect or unfair outcomes.~~

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

32 Many people, however, particularly low-income people and members of historically
33 underserved communities, are unable to access representation or assistance.⁵ One barrier is the
34 ~~critical~~ shortage of affordable legal services. This concern is particularly acute in remote and
35 rural areas, where not only are lawyers relatively scarce and may not have relevant expertise, but

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. 94,319 (Dec. 23, 2016); see also, Admin. Conf. of the U.S., Recommendation 86-1, *supra* note 1, at 25,642 *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/Dec. 9, 2024) (draft report to the Admin. Conf. of the U.S.).



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36 they may not be accessible to people who need them due to the long distances required to visit in
37 person, inability to consult virtually, and other barriers.

38 Federal agencies have long innovated various ways to widen the pool of available
39 representatives and expand assistance. For example, many agencies currently permit participants
40 in agency adjudications to be represented by qualified or accredited nonlawyers.⁶ In many
41 instances, the decision maker (whether or not an administrative law judge) makes an informal
42 determination whether a representative is “qualified,” but some adjudicative systems provide for
43 a formal accreditation system to determine which nonlawyer representatives are qualified to
44 practice in those systems.⁷

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

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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53 in turn inspire public confidence in agency adjudication. Agencies can engage with such groups
54 to help increase availability and awareness of nonlawyer representation and assistance in these
55 communities.

56 There are barriers to increasing availability of nonlawyer representation and assistance,
57 including barriers that agencies may be able to address through their rules regarding
58 representation and assistance. Agencies vary in their requirements, oversight, and encouragement
59 of such representation and assistance. ~~Overly burdensome requirements for representatives to~~
60 ~~establish their qualifications or to become accredited to practice before particular agencies can~~
61 ~~unnecessarily reduce the availability of nonlawyer representation. While reasonable requirements~~
62 ~~for qualification or accreditation, as well as continuing education, help ensure the quality and~~
63 ~~competence of representation, overly burdensome requirements can unnecessarily reduce the~~
64 ~~availability of nonlawyer representation.~~ When agencies do not affirmatively inform participants
65 of the availability of such representation or assistance, participants may not be aware of these
66 resources.

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

⁹ Admin. Conf. of the U.S., Recommendation 86-1, *supra* note 1, at 25,642 *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).

Commented [CA2]: Proposed Amendment from Council #1 (see associated amendments at paragraphs 4, 7, and 8)

The amendments proposed here and in paragraphs 4, 7, and 8 clarify that agencies must consider how agency-imposed requirements affect the availability of representation.



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77 *Conduct*, that, among other topics, address the qualifications and conduct of nonlawyer
78 representatives.¹²

79 This Recommendation expands on the Conference’s previous recommendations by
80 identifying best practices for incorporating and increasing representation and assistance by
81 permitting broader practice by nonlawyers in different types of adjudicative systems and
82 providing guidance to make processes governing nonlawyer representation and assistance more
83 accessible and transparent.

RECOMMENDATION

Availability of Nonlawyer Assistance

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

Commented [CMA3]: Proposed Amendment from Senior Fellow Jonathan Rose #1: I would move Availability of Nonlawyer Representation and Paragraphs 3-12 to the beginning, followed by Availability of Nonlawyer Assistance and current Paragraphs 1-2.

Commented [CMA4]: Proposed Amendment from Senior Fellow Jonathan Rose #2: In the Section on Availability of Nonlawyer Assistance I would reverse the order of Paragraphs 1 and 2.

¹² [Admin. Conf. of the U.S., Model Rules of Representative Conduct](#) 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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Availability of Nonlawyer Representation

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

Qualifications of Nonlawyer Representatives

- 100 4. Agencies should establish reasonable qualifications required for nonlawyer
101 representatives to practice before them, without adding unnecessary burdens. When
102 determining whether a nonlawyer is qualified to represent a participant in an agency
103 proceeding, agencies should consider the factors listed in the *Model Rules of*
104 *Representative Conduct*, such as the representative's relationship to the participant; their
105 knowledge, expertise, experience, or skill; and their fitness to serve.
- 106 5. Agencies should provide that an individual who is disbarred from practicing law is not
107 permitted to serve as a nonlawyer representative before the agency.

Commented [CA5]: Proposed Amendment from Council #1 (see corresponding amendments at lines 59-64 and paragraphs 7 and 8)

Commented [CMA6]: Proposed Amendment from Senior Fellow Jonathan Rose #3.

Commented [CA7]: Proposed Amendment from Council #2

The Council is concerned that a categorical ban on practice by disbarred attorneys may reduce unnecessarily the availability of representation. Assessing "fitness to serve" (paragraph 4) in determining whether a nonlawyer is qualified to represent participants provides agencies an adequate opportunity to consider disbarment on a case-by-case basis.

Accreditation of Nonlawyer Representatives

- 108 6. In addition to establishing qualifications for nonlawyer representatives, the following
109 types of agencies should consider developing and implementing accreditation programs
110 for nonlawyer representatives to help ensure the quality and competency of
111 representation in their adjudicative proceedings:
- 112 a. Agencies conducting adversarial adjudications with evidentiary hearings;
 - 113 b. Agencies that adjudicate a high volume of cases involving historically
114 underserved communities; and
 - 115 c. Agencies with adjudications that involve specialized or technical subject matter.
- 116 7. Agencies with accreditation programs should consider ~~requiring~~ implementing reasonable
117 initial and continuing education requirements for nonlawyer representatives, either by
118 providing such education directly or by working with organizations that employ, educate,



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- 119 or mentor nonlawyer representatives. In doing so, agencies should avoid imposing
120 education requirements that unnecessarily burden representatives.
- 121 8. Agencies regularly should regularly review the requirements of their accreditation
122 programs to ensure they are reasonable and beneficial without adding unnecessary
123 burdens.
- 124 9. Agencies with programs for accrediting, educating, and regulating nonlawyer
125 representatives who practice before them should have dedicated funding to ensure
126 availability of representation and reduce wait times for accreditation.

Commented [CA8]: Proposed Amendment from Council #1 (see corresponding amendments at lines 59-64 and paragraphs 4 and 8)

Commented [CA9]: Proposed Amendment from Council #1 (see corresponding amendments at lines 59-64 and paragraphs 4 and 7)

Commented [CA10]: Proposed Amendment from Council #3

The Council believes that separate, insulated funding may not be necessary so long as adequate funding is available for this purpose.

Oversight and Enforcement

- 127 10. Agencies should establish rules to govern the conduct and ethical obligations of
128 nonlawyer representatives. Agencies should consider adopting in whole or in part they may
129 wish to use the Model Rules of Representative Conduct as a resource in establishing such
130 rules.
- 131 11. Agencies should establish procedures for reviewing allegations or evidence of
132 noncompliance by nonlawyer representatives with their rules of conduct; adjudicating
133 allegations that nonlawyer representatives have violated those rules; and imposing
134 sanctions on nonlawyer representatives found to have violated the rules of conduct.
135 Agencies should also ensure they have procedures for enforcing such sanctions.
- 136 12. Agencies should provide for administrative review of any sanctions imposed on
137 nonlawyer representatives for violation of relevant conduct rules.

Commented [CA11]: Proposed Amendment from Council #4

As rewritten, this paragraph would encourage agencies to use the Model Rules as a helpful resource without explicitly condoning the content of the Model Rules in its entirety.

Transparency with Regard to Representation and Assistance

- 138 13. To improve participants' awareness of options for representation and assistance,
139 including by qualified or accredited nonlawyers, agencies should inform participants
140 about such options early and throughout adjudications, including at levels of decision-
141 making prior to an opportunity for a hearing and by posting relevant information on their
142 websites.



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- 143 14. Agencies should publish the following in the *Code of Federal Regulations* and on their
144 websites:
- 145 a. Rules prescribing the qualifications required for nonlawyer representatives;
 - 146 b. Rules for accrediting, educating, and regulating nonlawyer representatives, for
147 agencies with formal accreditation programs; and
 - 148 c. Rules governing the conduct and ethical obligations of nonlawyer representatives,
149 as well as procedures for adjudicating alleged violations of these rules and
150 imposing sanctions.
- 151 15. To inform and protect future participants, agencies should publish on their websites the
152 names of nonlawyer representatives who are currently barred from serving as
153 representatives have been sanctioned, the nature of the sanction, and, as relevant, the
154 specified period of the sanction. Agencies may omit certain information regarding the
155 nature of the violation or sanction as necessary to preserve recognized privacy interests.
156 Agencies should consider establishing, when appropriate, procedures for removing
157 information about sanctioned representatives from their websites after a certain period of
158 time has elapsed or a sanction is no longer in effect.

Commented [CMA12]: Proposed Amendment from Special Counsel Jeffrey S. Lubbers: I don't like the "name and shame" aspect of Paragraph 15. I think the government should engage in such stigmatizing as little as possible. At most, the names of representatives who are currently *persona non grata* would be enough. It may also discourage representation that is needed. It also seems to cover situations where a representative who has been too aggressive is bounced from a case without more.

Commented [CA13]: Proposed Amendment from Council #5

Coordination and Collaboration with Regard to Representation and Assistance

- 159 16. Agencies with overlapping subject matters, similar adjudication systems, or similar
160 regulatory structures for nonlawyer representation should identify opportunities for
161 interagency coordination of accreditation or education programs for nonlawyer
162 representatives, to save resources and promote consistency.
- 163 17. When authorized by law, agencies should expand grant funding opportunities for
164 nonprofit organizations that employ, educate, or mentor nonlawyers who represent or
165 assist participants.
- 166 18. Agencies should work with law and other professional school clinics to expand programs
167 that allow students to represent participants under the supervision of lawyers or other
168 accredited professionals or provide assistance to participants.



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- 169 19. Agencies should engage with community-based organizations, nongovernmental
170 organizations, advocacy groups, and other organizations that can assist in building trust
171 among participants and improve nonlawyer representation and assistance by bringing
172 knowledge of and expertise in issues facing those communities.
- 173 20. Agencies should collaborate with state bar associations and other relevant licensing
174 authorities to reduce the effect that state prohibitions against unauthorized practice of law
175 may have on the ability of nonlawyers to represent parties before them.

Data

- 176 21. Agencies should gather and maintain baseline comparative data on representation,
177 including by nonlawyers, to (1) help agencies and others assess whether rules and
178 procedures regarding nonlawyer representation are achieving agency goals in making
179 such representation available and accessible; and (2) identify opportunities for expanding
180 access to representation. Such data should include, at a minimum, the type and number of
181 nonlawyer representatives; the outcomes, in aggregate, of cases in which parties have no
182 representation, lawyer representation, or nonlawyer representation; the number of
183 pending applications for accreditation; and average wait time for applications to be
184 reviewed. Agencies should make data regarding representation publicly available,
185 including on their websites, and regularly update it.
- 186 22. To the extent practicable, agencies should gather and maintain data on assistance,
187 including by nonlawyers, to assess participants' experiences with and access to various
188 forms of assistance. Agencies may collect such information by, for example, surveying
189 participants regarding whether they received any assistance, the type of assistance they
190 received, and the effectiveness of such assistance. To help with the assessment of funding
191 opportunities, Agencies- agencies may also require grantees, as a condition of their
192 grants, to report on the types of assistance they provide, the number of participants they
193 assist, and the outcomes of such assistance (e.g., the individual applied for or received
194 benefits). Agencies should make data on assistance publicly available, including on their
195 websites, and regularly update it.

Commented [CA14]: Proposed Amendment from Council #6 (see associated amendment at line 194)

Commented [CA15]: Proposed Amendment from Council #7

As amended, this paragraph would clarify that the purpose of requiring grantees to collect such information is to enable agencies to assess the performance of grant-funded assistance and not necessarily to condition the award of future grants to entities based on their past performance in achieving particular outcomes (which may have unintended consequences).

Commented [CA16]: Proposed Amendment from Council #6 (see associated amendment at line 185)