



Recommendation 86- 1

Nonlawyer Assistance and Representation

(Adopted June 19, 1986)

A substantial number of individuals involved in Federal "mass justice"¹ agency proceedings need and desire assistance² in filling out forms, filing claims, and appearing in agency proceedings, but are unable to afford assistance or representation by lawyers. A lack of assistance or representation reduces the probability that an individual will obtain favorable results in dealing with an agency. Further, unassisted individuals are more likely than those who are assisted to cause a loss of agency efficiency by requiring more time, effort, and help from the agency.

Federal agencies currently provide help to persons involved in agency proceedings through information given by agency personnel and through funding of legal aid programs and approval or payment of attorney fee awards. This recommendation does not deal with whether government aid may be needed for persons who cannot afford any form of assistance. This recommendation focuses on the potential for increasing the availability of assistance by nonlawyers. Federal agency experience and statistics indicate that qualified persons who are not lawyers generally are capable of providing effective assistance to individuals in mass justice agency proceedings.

While it is recognized that no established privilege protects the confidentiality of communications between nonlawyers and their clients, agencies may adopt some protections covering their own proceedings. The possible limitation of such protections does not outweigh the benefits of increased assistance and representation.

¹ The term "mass justice" is used here to categorize an agency program in which a large number of individual claims or disputes involving personal, family, or personal business matters come before an agency; e.g., the Old Age Survivors and Disability Insurance program administered by the Social Security Administration. To the extent that principles incorporated in this Recommendation may be applicable to other programs in which nonlawyer assistance or representation is (or could be made) available, the Conference recommends the consideration of these principles by the agencies involved.

² The term "assistance" is used here to indicate all forms of help, including representation, that may be beneficial to a person in dealing with an agency. The term "representation" is used whenever the most likely form of assistance involves such activities as making an appearance, signing papers, or speaking for the assisted individual. Neither term is meant to be exclusive.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Agency practices do not currently maximize the potential for free choice of assistance, and, in some instances, may hinder the availability of qualified, low-cost assistance by nonlawyers. Agencies should take the steps necessary to encourage—as well as eliminate inappropriate barriers to—nonlawyer assistance and representation.

Agencies generally have the authority to authorize any person to act as a representative for another person having business with the agency. Where an agency intends to permit nonlawyers to assist individuals in agency matters, the agency needs to state that intention affirmatively in its regulations for two reasons. First, an affirmative statement is essential, under existing case law, to protect a nonlawyer from prosecution—under state "unauthorized practice of law" prohibitions—for assisting and advising a Federal client preparatory to commencing agency proceedings, as well as for advertising the availability of services. Second, an affirmative agency position is needed to overcome a common assumption of nonlawyers that agencies welcome only lawyers as representatives, and thereby to encourage an increase in the provision of nonlawyer services.

Recommendation

1. The Social Security Administration, the Immigration and Naturalization Service, the Veterans Administration, the Internal Revenue Service, and other Federal agencies that deal with a significant number of unassisted individuals who have personal, family, or personal business claims or disputes before the agency, should review their regulations regarding assistance and representation. The review should be directed toward the goals of authorizing increased assistance by nonlawyers, and of maximizing the potential for free choice of representative to the fullest extent allowed by law.

2. If an agency determines that some subject areas or types of its proceedings are so complex or specialized that only specially qualified persons can adequately provide representation, then the agency may need to adopt appropriate measures to ensure that nonlawyers meet specific eligibility criteria at some or all stages of representation. Agencies should tailor any eligibility requirements so as not to exclude nonlawyers (including nonlawyers who charge fees) as a class, if there are nonlawyers who, by reason of their knowledge, experience, training, or other qualification, can adequately provide assistance or representation.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

3. Agencies should declare unambiguously their intention to authorize assistance and representation by nonlawyers meeting agency criteria. Where a declaration by an agency may have the effect of preempting state law (such as "unauthorized practice of law" prohibitions), then the agency should employ the procedures set out in Recommendation 84-5 with regard to notification of and cooperation with the states and other affected groups.

4. Agencies should review their rules of practice that deal with attorney conduct (such as negligence, fee gouging, fraud, misrepresentation, and representation when there is a conflict of interest) to ensure that similar rules are made applicable to nonlawyers as appropriate, and should establish effective agency procedures for enforcing those rules of practice and for receiving complaints from the affected public.

Citations:

51 FR 25641 (July 16, 1986)

__ FR ____ (2012)

1986 ACUS 3