



Request for Proposals—May 10, 2021

Regulation of Representatives in Agency Proceedings

The Administrative Conference of the United States (ACUS) is accepting proposals from individuals interested in serving as a consultant to produce a report about agency rules regulating the conduct of attorney and non-attorney representatives who appear before agencies in administrative proceedings.

Project Description and Consultant Responsibilities

A growing number of agencies have adopted rules regulating the conduct of attorney and non-attorney representatives appearing before them in adjudications, rulemakings, and other administrative proceedings. The rules cover things like qualifications, scope of practice, professional conduct, communications, and discipline. They vary from one agency to another in many ways, including their level of detail, the subjects they address, and how they address those subjects. Most such rules carry sanctions—including limitation or suspension of a representative's right to appear on behalf of a client—when they are violated.

Knowing more about the extent, causes, and effects of the profusion of different agency rules regulating representatives could help agencies decide whether and how to adopt or modify their own rules regulating representatives. And an improved understanding of divergences in agencies' rules regulating representatives could yield important insights into the costs and benefits of greater uniformity in such rules. ACUS is therefore undertaking a project to study the rules regulating the conduct of representatives appearing before agencies in administrative proceedings. The project will:

- Survey and catalogue differences in agencies' rules regulating representatives' conduct;
- Examine why different agencies adopt different rules, the ways different agencies' rules operate, and the effects different rules have on agencies, representatives, and persons affected by agencies' actions;
- Attempt to distill best practices for agencies by assessing, for example, whether there are certain types of rules regulating representatives' conduct agencies should presumptively adopt (or refrain from adopting), whether certain formulations of such rules are superior to others in achieving particular aims, and where such rules should be published or compiled and what form they should take; and
- Assess what consequences, if any, variation in agencies' rules regulating representatives has across agencies.

The draft report will be completed by October 2021, and the consultant(s) will thereafter be expected to work with Conference staff and committees as the Conference develops recommendations from the report in time for the Conference's December 2021 plenary session.¹ The Conference may select a single consultant or assemble a team of consultants depending on the proposals it receives. Consultants will receive between \$12,000 and \$25,000, plus a budget for related expenses, depending on the number of consultants and allocation of responsibilities. The total value of consulting fees for this project will not exceed \$25,000, to be apportioned in accordance with the number of consultants and division of responsibilities.

Submitting a Proposal and Evaluation Criteria

If you are interested in serving as a consultant for the report, send an email to Mark Thomson (mthomson@acus.gov) with the phrase "ACUS Project Proposal" in the subject line. Attach your curriculum vitae to the email, along with a short (ideally no more than one page) statement identifying what you see as the primary issues that the report should address. **All responsible sources must submit a proposal by 5:00 p.m. Eastern Time on May 10, 2021 to be guaranteed consideration by the agency.**

Proposals will be evaluated based on quality, clarity, and the proposer's qualifications. The Conference has a strong preference for consultants who have previously authored scholarly work on agencies' rules regulating representatives' conduct.

¹ Both the report due date and the date of the plenary session are subject to change in light of COVID-19 and related matters.