



Self-Represented Parties in Administrative Hearings

Committee on Administration and Management

Proposed Recommendation for Committee | September 29, 2016

1 Federal agencies conduct millions of hearings each year, making decisions that can
2 establish, maintain, or eliminate eligibility for important benefits and services relating to, among
3 other things, disability or Veterans' benefits, immigration status, and home or property loans. In
4 many of these adjudications, claimants appear unrepresented for part or all of the proceeding and
5 must learn to navigate hearing procedures, which can be quite complex, without expert
6 assistance. The presence of self-represented parties¹ in administrative hearings can create
7 challenges for both administrative agencies and for the parties seeking agency assistance.
8 Further, the presence of self-represented parties raises a number of concerns relating to the
9 consistency of hearing outcomes and the efficiency of processing cases.

10 Because of these concerns, in the spring of 2015 the Department of Justice's Access to
11 Justice Initiative asked the Administrative Conference to co-lead a working group on self-
12 represented parties in administrative hearings, and the Conference agreed. The working group,
13 which operates under the umbrella of the Legal Aid Interagency Roundtable (LAIR), has been
14 meeting since that time.² During working group meetings, representatives from a number of
15 agencies, including the Social Security Administration (SSA), Executive Office for Immigration

¹ The term "self-represented" is used to denote parties who do not have professional representation, provided by either a lawyer or an experienced nonlawyer. Representation by a non-expert family member or friend is included in this recommendation's use of the term "self-represented." Administrative agencies generally use the term "self-represented," in contrast to courts' use of the term *pro se*. Because this recommendation focuses on agency adjudication, it uses the term "self-represented," though acknowledges that the two terms are effectively synonymous.

² LAIR was established in 2012 by the White House Domestic Policy Council and the Department of Justice. *See White House Legal Aid Interagency Roundtable*, U.S. DEP'T OF JUST., <https://www.justice.gov/lair> (last visited Aug. 16, 2016). It was formalized by Presidential Memorandum in the fall of 2015. *See Memorandum from the President to the Heads of Exec. Dep'ts and Agencies* (Sept. 14, 2015), <https://www.whitehouse.gov/the-press-office/2015/09/24/presidential-memorandum-establishment-white-house-legal-aid-interagency>.



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16 Review (EOIR), Board of Veterans' Appeals (BVA), Internal Revenue Service (IRS),
17 Department of Health and Human Services (HHS), Department of Agriculture (USDA), and
18 Department of Housing and Urban Development (HUD) participated, and shared information
19 about their practices and procedures relating to self-represented parties. In working group
20 meetings, agency representatives agreed that hearings involving self-represented parties are
21 challenging, and expressed interest both in learning more about how other agencies and courts
22 handle self-represented parties and in improving their own practices. This recommendation, and
23 its accompanying report,³ arose in response to those concerns.⁴

24 While civil courts have long recognized and worked to address the challenges introduced
25 by the presence of self-represented parties, agencies have only begun to systematically focus on
26 issues relating to self-representation in recent years. Administrative agencies are undertaking
27 numerous efforts to accommodate self-represented parties in their adjudication processes.⁵ Yet
28 quantitative information on self-representation in the administrative context is comparatively
29 scarce, and there is much insight to be gained from the civil courts in identifying problems and
30 solutions pertaining to self-representation. Although there are important differences between
31 procedures in administrative hearings and those in civil courts, available information indicates
32 that the two contexts share many of the same problems—and solutions—when dealing with self-
33 represented parties.⁶

³ Connie Vogelmann, *Self-Represented Parties in Administrative Hearings* (Sept. 7, 2016), <https://www.acus.gov/sites/default/files/documents/Self-Represented-Parties-Administrative-Hearings-Draft-Report.pdf>.

⁴ It should be noted that this recommendation primarily targets the subset of administrative agencies that conduct their own administrative hearings. Components of a number of federal agencies—including HUD, HHS, and USDA—do not conduct hearings directly, and instead delegate adjudication responsibilities to state or local entities. Because the challenges facing these agencies are quite distinct, they warrant separate research and recommendations.

⁵ Vogelmann, *supra* note 3, at 28–50.

⁶ *Id.* at 4.



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34 Challenges related to self-represented parties in administrative hearings can be broken
35 down into two main categories: those pertaining to the efficiency of the administrative
36 proceeding and those relating the outcome of the procedure.

37 From an efficiency standpoint, self-represented parties' lack of familiarity with agency
38 procedures and administrative process can cause delay both in individual cases and on a systemic
39 level. Delays in individual cases may arise when self-represented parties fail to appear for
40 scheduled hearings, file paperwork incorrectly or incompletely, do not provide all relevant
41 evidence, or make incoherent or legally irrelevant arguments before an adjudicator. In the
42 aggregate, self-represented parties also may require significant assistance from agency staff in
43 filing their claims and appeals, which is particularly challenging given agencies' significant
44 resource constraints. Finally, self-represented parties may create challenges for adjudicators, who
45 may struggle to provide appropriate assistance to self-represented parties while maintaining
46 impartiality and the appearance of impartiality.⁷ These problems are exacerbated by the fact that
47 many agencies hear significant numbers of cases by self-represented parties each year.

48 Self-represented parties also may face suboptimal outcomes in administrative
49 proceedings compared to their represented counterparts, raising issues of fairness. Even
50 administrative procedures that are designed to be handled without trained representation can be
51 challenging for inexperienced parties to navigate, particularly in the face of disability or
52 language or literacy barriers. Furthermore, missed deadlines or hearings may result in a self-
53 represented party's case being dismissed, despite its merits. Self-represented parties often
54 struggle to effectively present their cases and, despite adjudicators' best efforts, may receive
55 worse results than those with representation.⁸

⁷ *Id.* at 3–8.

⁸ *Id.*



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56 Civil courts face many these same efficiency and consistency concerns, and in response
57 have implemented wide-ranging innovations to assist self-represented parties.⁹ Innovations have
58 included in-person self-service centers, workshops explaining the hearing process or helping
59 parties complete paperwork, and virtual services such as helplines accessible via phone, email,
60 text, and chat. Courts have also invested in efforts to make processes more accessible to self-
61 represented parties from the outset through the development of web resources, e-filing and
62 document assembly programs, and plain language and translation services for forms and other
63 documents. Finally, courts have also used judicial resources and training to support judges and
64 court personnel to effectively and impartially support self-represented parties.

65 These innovations have received extremely positive feedback from parties, and early
66 reports indicate that they improve court efficiency and can yield significant cost savings for the
67 courts.¹⁰ Administrative agencies have also implemented, or are in the process of implementing,
68 many similar innovations.¹¹

69 This recommendation builds on the successes of both civil courts and administrative
70 agencies in dealing with self-represented parties and makes suggestions for further improvement.
71 It is important to emphasize that, in making this recommendation, the Conference makes no
72 normative judgment on the presence of self-represented parties in administrative hearings. This
73 recommendation assumes that there will be circumstances in which parties will choose to
74 represent themselves, and seeks to improve the resources available to those parties.

75 The recommendation is not intended to be one-size-fits-all, and not every
76 recommendation will be appropriate for every administrative agency. To the extent that this
77 recommendation requires additional expenditure of resources by agencies, innovations are likely

⁹ *See id.* at 14–28.

¹⁰ Richard Zorza, *Trends in Self-Represented Litigation Innovation*, in *FUTURE TRENDS IN STATE COURTS* 85, 85 (Carol R. Flango et. al. eds., 2006); *See generally*, John Greacen, *THE BENEFITS AND COSTS OF PROGRAMS TO ASSIST SELF-REPRESENTED LITIGANTS* (2009).

¹¹ Vogelmann, *supra* note 3, at 28–50.



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78 to pay dividends in increased efficiency and consistency of outcome in the long term. The goals
79 of this recommendation are to improve both the ease with which cases involving self-represented
80 parties are processed and the consistency of the outcomes reached in those cases.

RECOMMENDATION

Agency Resources

- 81 1. Agencies should consider investigating and implementing triage and diagnostic tools to
82 direct self-represented parties to appropriate resources based on both the complexity of
83 their case and their individual level of need. These tools can be used by self-represented
84 parties themselves for self-diagnosis, or can be used by agency staff to improve
85 consistency and accuracy of information provided.
- 86 2. Agencies should strive to develop a continuum of services for self-represented parties,
87 allowing parties to obtain assistance by different methods depending on need. In
88 particular, agencies should:
 - 89 a. Use websites to make relevant information available for parties to access, and
90 expanding e-filing opportunities;
 - 91 b. Continue efforts to make forms and other important materials accessible to self-
92 represented parties by providing them in plain language and in other languages as
93 needed; and
 - 94 c. Provide a method for self-represented parties to communicate in “real-time” with
95 agency staff.
- 96 3. Agencies should provide training for adjudicators for dealing with self-represented
97 parties, including providing explicit guidance for how they should interact with self-
98 represented parties during administrative hearings. Specifically, training should address
99 interacting with self-represented parties in situations of limited literacy or English
100 proficiency or mental or physical disability.



101 **Data Collection and Agency Coordination**

- 102 4. Agencies should seek to collect data on their services for self-represented parties and use
103 the data to continually evaluate and revise these services based on feedback from both
104 self-represented parties and agency personnel.
- 105 5. Agencies should strive to keep open lines of communication with other agencies and with
106 courts, recognizing that in spite of differences in hearing procedures, other adjudicators
107 have important and transferable insights in working with self-represented parties. In
108 doing so, agencies must be mindful of the requirements of the Paperwork Reduction Act.

Considerations for the Future

- 109 6. In the long term, agencies should strive to re-evaluate hearing procedures with an eye
110 toward accommodating self-represented parties. Hearing procedures are often designed to
111 accommodate attorneys and other trained professionals, and agencies should evaluate the
112 feasibility of navigating their system as an outsider, and make changes—as allowed by
113 their statutes and regulations—to simplify their process accordingly. Although creation of
114 simplified procedures would benefit all parties, they would be expected to provide
115 particular assistance to self-represented parties.