Fact Sheet
Abstention Update[1]

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Advocates representing Medicaid beneficiaries generally have the choice of bringing claims at a state administrative hearing or in state or federal court. When advocates file cases in federal district court, attorneys representing the state may argue that the court should abstain from hearing the case. This is particularly true if the beneficiary has also requested an administrative hearing. This Fact Sheet discusses various abstention doctrines and some notable recent cases in which federal courts have decided to abstain from hearing Medicaid claims.[2] Advocates need to be aware of these cases, particularly the Eighth Circuit's decision in *Hudson v. Campbell,* in which the Court dismissed the case based on *Younger* abstention.[3]

Background on Abstention

Generally, federal courts have "a virtually unflagging obligation" to exercise their jurisdiction."[4] But under some circumstances, federal courts should decline to decide unsettled issues of state law and avoid interfering in ongoing state court or administrative proceedings. This practice, known as abstention, should be "the exception and not the rule."[5] Consistent with that principle, courts have traditionally not abstained from hearing Medicaid cases. In the past several years, however, there have been several surprising decision in which federal courts decided to abstain from hearing Medicaid claims. There are several types of abstention. Notable are the following doctrines:

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[2] For an earlier review of Medicaid abstention decisions, *see* Sarah Somers & Natalie Kean, *Update on Federal Court Access – Abstention* (July 2007) (available from TASC and NHeLP). For a more general discussion of abstention, *see* SHRIVER CENTER ON LAW & POVERTY, FEDERAL PRACTICE MANUAL FOR LEGAL AID ATTORNEYS Ch. 2.8 (Jeffrey S. Gutman ed., 2010 update), *available at* http://povertylaw.org/communication/federal-practice-manual.

[3] 663 F.3d 885.

[4] *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992).

[5] *Id.*

Younger Abstention

Younger abstention, named for the Supreme Court case *Younger v. Harris*, is invoked to prevent interference by a federal court in *ongoing* state judicial or administrative proceedings.[6] It is appropriate when such proceedings involve important state interests that are traditionally addressed under state law, as long as the state proceedings could afford adequate relief for the plaintiff.[7] The doctrine originally was applied only to ongoing state criminal court proceedings, but the grounds for *Younger* abstention have since been significantly expanded. Now, it is regularly applied in civil cases and to administrative proceedings, if the federal court finds that there is an opportunity to raise federal issues in the administrative proceeding itself or on court review of the administrative decision.[8]

Some courts have held that *Younger* should only be invoked when proceedings are "coercive" (not initiated by potential plaintiffs but in which they must participate) and not "remedial" (voluntarily initiated by a plaintiff to redress a wrong by the state).[9] This concept was recognized in the Supreme Court's decision in *Ohio Civil Rights Comm'n v. Dayton Christian Schools.*[10] In that case, a state civil rights commission initiated an administrative proceeding against a private school, which then filed an action in federal court under § 1983, alleging that the proceedings would violate the First Amendment.[11] The Supreme Court held that abstention was appropriate. It also held that its decision was consistent with *Patsy v. Board of Regents of the State of Florida*, which holds that a plaintiff are not required to exhaust administrative remedies before filing a claim under § 1983.[12] Unlike the situation in *Patsy*, the Court noted that administrative proceedings were well underway before the federal action, an important state interest was involved, and the proceedings were "coercive" and not "remedial."[13] As a recent Tenth Circuit decision illustrates and as discussed below, the distinction between coercive and remedial proceedings can be unclear.

Burford Abstention

Burford abstention is intended to prevent federal courts from bypassing a state administrative process and resolving issues of state law and policy that should properly be determined by a state administrative body.

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[6] *Younger v. Harris,* 401 U.S. 37 (1971); *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619 (1986).
[7] *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 10-17 (1987)
[8] *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. at 627; *see also Middlesex County Ethics Com. v. Garden State bar Ass'n*, 457 U.S. 423 (1982)
[9] *See, e.g., Kercado-Melendez v. Aponte-Roque,* 829 F.2d 255 (1st Cir. 1987).
[10] 477 U.S. 619 (1986).
[11] *Id.* at 625.
[12] 457 U.S. 496 (1982); *see also Monroe v. Pape,* 365 U.S. 167 (1961).
[13] 477 U.S. at 627, n. 2.

Under this doctrine, federal district courts should decline from hearing claims that would affect proceedings or orders of state administrative agencies when there are "difficult questions" regarding important state policy or federal review would disrupt state efforts to establish consistent policy related to a "matter of substantial public concern."[14] *Burford* abstention is appropriate when adequate and timely state court review is available and a case involves: (1) a complex administrative scheme; (2) supervised by state courts; that (3) addresses complicated state law questions requiring specialized knowledge and expertise.[15] For abstention to be appropriate, the primary purpose of the state's administrative system must be to achieve a uniform policy regarding an essentially local problem.[16]

Colorado River Abstention

The *Colorado River* abstention doctrine allows a federal district court to stay or dismiss a suit when there is a substantially similar suit pending in state court.[17] Suits are substantially similar when they involve the same parties and the claims are predicated on the same allegations.[18]

Colorado River holds that abstention is warranted only in exceptional circumstances. [19] A court must consider a number of factors in determining whether such circumstances exist, including the inconvenience of the federal forum for defendants, whether property is the subject of the suit, the desirability of avoiding piecemeal litigation, the order in which the state and federal courts obtained jurisdiction, the adequacy of the state forum, source of governing law, relative progress in each case, and whether federal or state law controls the litigation.[20]

Rooker-Feldman Doctrine

While not technically an abstention doctrine, *Rooker-Feldman* is often raised when defendants argue for abstention. This doctrine provides that federal courts cannot entertain appeals of state court decisions.[21] It holds that a district court has no jurisdiction over a matter in which a state court loser is asking the federal court to review and reverse a state court judgment that was rendered before the federal proceeding is

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[14] *New Orleans Pub. Serv. Inc. v. Council of New Orleans*, 491 U.S. 350, 361 (1989). *See also Burford v. Sun Oil,* 319 U.S. 315 (1943).
[15] *Arkansas Medical Soc., Inc. v. Reynolds*, 6 F.3d 519, 528-29 (8th Cir. 1993); *see also New Orleans Pub. Serv. Inc. s*, 491 U.S. at 361; *New Orleans Pub. Serv. Inc.,* 491 U.S. at 361.
[16] 491 U.S. at 362.
[17] *Colo. River Water Conservation Dist. v. U.S.*, 424 U.S. 800, 818-20 (1976).
[18] *Romine v. Compuserve Corp.,* 160 F.3d 337 (6th Cir. 1998); *see also Nabash v. Marceau,* 882 F.2d 1411, 1416 (9th Cir. 1989).
[19] *Colo. River* at 818-19.
[20] *Id.*; *Moses S. Cone Mem. Hosp. v. Mercury Construction Corp.,* 460 U.S. 1, 16 (1983).
[21] *Rooker v. Fidelity Trust Co*., 263 U.S. 413 (1923); *D.C. Ct. of App. v. Feldman*, 460 U.S. 462 (1983).

initiated.[22] For the doctrine to apply, the two claims must be inextricably intertwined such that the federal claim could only succeed if the court found that the state court had wrongly decided the issue.[23] The Supreme Court has stated that *Rooker-Feldman* "has no application" to state administrative decisions.[24]

Thus, while *Younger* abstention may compel a federal court from hearing a Medicaid claim while there is an ongoing state administrative hearing, even after a final state court decision is rendered, *Rooker-Feldman* can bar a federal district court from hearing a claim that amounts to a review of that particular decision.

Pullman **Abstention**

The *Pullman* doctrine holds that federal district courts may abstain from hearing a case involving federal constitutional claims when a case also implicates: (1) uncertain issues of state law underlying the federal constitutional claims brought in federal court; (2) state law issues that could be interpreted by a state court would eliminate the need to adjudicate the constitutional claims; and (3) a federal court's erroneous construction of state law would disrupt important state policies.[25]

There are few reported cases addressing the *Pullman* doctrine in the Medicaid context and those that do tend to find that the doctrine does not bar federal court adjudication.[26]

These doctrines are summarized in Table 1, below.

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[22] *See, e.g., Exxon Mobile Corp. v. Saudi Basic Industries Corp.,* 544 U.S. 280, 284 (2005). Federal review of state court decisions is only available when a state supreme court renders a final judgment that implicates a conflict with federal law and a petition for a writ of certiorari is filed with the Supreme Court pursuant to 28 U.S.C. § 1257. *Feldman,* 460 U.S. at 476.
[23] *See, e.g., Charchenko v. City of Stillwater,* 47 F.3d 981 (8th Cir. 1995).
[24] *Verizon Md., Inc. v. Public Servs. Comm'n of Md.,* 535 U.S. 635, 644 n.3 (2002). *See also Sanders v. Kan. Dep't of Rehab Services,* 317 F. Supp. 2d 1233 (D. Kan. 2004) (noting in a Medicaid case that the *Rooker-Feldman* does not apply to administrative proceedings).
[25] *See Railroad Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941)
[26] *See, e.g., Providence Pediatric Medical Daycare, Inc. v. Alaigh*, 799 F.Supp.2d 364 (D.N.J. 2011) (noting courts should employ *Pullman* rarely).

Table 1: Summary of Federal Abstention Doctrines

Doctrine	Younger	Burford	Colorado River	Rooker-Feldman	Pullman
Purpose of doctrine	To prevent interference in ongoing state proceedings	To avoid bypassing of state administrative process	To stay or dismiss in exceptional circumstances when substantially similar suit is pending in state court	To prohibit federal district courts from hearing appeals of state court decisions.	Avoiding federal constitutional decision when state law implicated.
When applicable	• State administrative or judicial proceedings • Ongoing • Important state interests • Coercive (in some circuits)	• Adequate and timely state review is available • Complex administrative scheme supervised by state courts • Involves complicated state law questions requiring specialized expertise • Uniform policy is important	Factors to be considered include: • Convenience of federal forum for defendants • Desireability of avoiding piecemeal litigation • Order in which state and federal courts obtained jurisdiction • Relative progress in each case • Which law (state or federal) controls the litigation • Convenience of state forum • Whether state property is involved	No federal district court jurisdiction when: • State court loser • Requests review of judgment of state court • Judgment was rendered before the federal proceeding initiated	• Uncertain issues of state law underlie constitutional claim • Interpretation of state laws could eliminate the need to adjudicate the constitutional claims • Federal court's erroneous construction of state law would disrupt important state policies.
Notable Recent Cases	*Brown v. Day* (10th) (not abstaining); *Hudson v. Cambell* (8th) (abstaining)	*Providence Pediatric Medical Daycare, Inc. v. Alaigh,* (D.N.J.)(not abstaining); *Parents League for Effective Autism Services v. Jones-Kelley* (S.D. Ohio) (same); *Romano v. Greenstein,* (E.D. La.)(same).	*B.D. v. Dazzo* (E.D. Mich.)(abstaining); *Lundergan v. Ariz.* (D. Ariz)(same); *Drury v. Maram* (C.D. Ill)(same).	*Mazin v. Steinberg* (D. Del.)(dismissed)	None

Recent Developments in Abstention

Younger: The question of what constitutes an "ongoing" judicial proceeding for purposes of this doctrine has received attention in recent years. Significantly, some courts have held that state proceeding may still be "ongoing" and abstention still appropriate wheren a plaintiff has chosen not to seek state judicial review of a final administrative ruling or has received a final administrative decision.[27] These holdings create clear tension with *Patsy's* holding that exhaustion is not required in § 1983 cases.[28]

There have been mixed results in Medicaid cases addressing this question. For example, in *Moore v. Medows*, the Federal District Court for the Northern District of Georgia held that there was no ongoing proceeding because the plaintiff withdrew her request for administrative hearing. [29] In contrast, in *Brown v. Day,* the Kansas Federal District Court held that, despite the fact that the plaintiff had already obtained a final administrative decision, a state proceeding had been "pending" when the federal action was filed because the plaintiff had not exhausted her right to appeal to state court and dismissed the case based on *Younger*.[30] This decision was later reversed, but the Tenth Circuit did not address the issue of whether the proceeding was "ongoing."[31]

Brown v. Day also addressed the issue of whether a proceeding was coercive or remedial. The District Court acknowledged that the proceeding had been initiated by plaintiff, which would normally mean that it was remedial. But, the Court reasoned, because the original action was filed in response to state enforcement of Medicaid requirements against plaintiff, the action was actually coercive.[32] A divided panel of the Tenth Circuit reversed this conclusion. It explained that a coercive proceeding is essentially one in which a party is being treated as a bad actor and the party is attempting to use the federal court to interfere with this proceeding. In contrast, here, the plaintiff had committed no bad act and was not challenging the proceedings themselves. In the view of the majority, this plaintiff was not a bad actor simply by receiving Medicaid when arguably not eligible. [33] The dissenting judge, however, would have held that the proceeding was coercive because "the proceedings represented . . . efforts at enforcing state Medicaid law" against the plaintiff.[34]

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[27] *See, e.g. O'Neill v. City of Philadelphia,* 32 F.3d 785, 791 (3d Cir. 1994).

[28] *Patsy,* 457 U.S. at 625.

[29] No. 1:07-CV-631-TWT, 2007 WL 1876017, *2-6 (N.D. Ga. June 28, 2007); *rev'd on other grounds,* 324 F. App'x 773 (11th Cir. 2004) (subsequent history omitted).

[30] No. CIVA 06-2212 KHV, 2006 WL 3087111, *2 (D. Kan. Oct. 27, 2006), *motion to amend den.* 477 F. Supp. 2d 1110 (D. Kan. 2007).

[31] 555 F.3d 882, 884 (10th Cir. 2007)

[32] 477 F. Supp. 2d at 1115-16.

[33] 555 F.3d at 893.

[34] *Id.* at 897.

Late last year, in *Hudson v. Campbell,* the Eighth Circuit affirmed the District Court for the Western District's decision to abstain in a Medicaid case.[35] Advocates should take note of this troubling decision and be wary of the increased risk of courts dismissing cases based on *Younger*.

In *Hudson,* the state Medicaid agency denied the plaintiff's application based on a disqualifying transfer of assets and she requested a fair hearing to challenge the denial. The agency requested a continuance, then issued another notice changing the reason for the denial. The hearing officer instructed plaintiff to request another hearing to contest the second notice of denial. Instead, she filed suit in the Federal District for Western Missouri. Defendants filed a motion to dismiss, arguing, among other things, that the court should abstain from hearing the case based on *Younger*.[36]

The Court agreed. First, it found that there was an ongoing state proceeding, despite the fact that no administrative hearing was pending. Because state law provides for administrative hearings and appeal to state court, the Court reasoned, "until these statutory avenues have been *exhausted*, [it] is an ongoing state proceeding."[37] Second, it held that the proceeding implicated the important state interest of allowing state agencies to administer their own matters without federal interference.[38] Third, the plaintiff could address her issues through the state forum.[39]

The District Court noted the distinction between remedial and coercive proceedings. But, it refused to follow *Brown*, citing an Eighth Circuit case applying *Younger* to a non-coercive administrative proceeding. [40] The Court acknowledged that its conclusion effectively imposed an exhaustion requirement on the Medicaid applicants, which conflicts with the Supreme Court's decision in *Patsy v. Board of Regents,* holding that exhaustion is not required for claims brought pursuant to § 1983.[41] It did not explain, however, why it found that it was not necessary to conform to *Patsy's* rule.

In a brief and lightly-reasoned decision, the Eighth Circuit affirmed.[42] In response to the plaintiff-appellant's argument that the Medicaid hearing was not coercive, the Court stated that the distinction was not outcome determinative in the Eighth Circuit. Because the Court found the plaintiffs fact situation "procedurally identical" to an Eighth

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[35] 663 F.3d 985 (8th Cir. 2011), *aff'g* No. 09-4271-CV-C-NKL, 2010 WL 1657989 (W.D. Mo. Apr. 26, 2010).
[36] Defendants also argued the Eleventh Amendment barred the suit and that the plaintiff had failed to state a claim for relief.
[37] *Hudson,* 2012 WL 1657989, *2 (emphasis added).
[38] *Id.*, at *3.
[39] *Id.*
[40] *Id.*, citing *Alleghany Corp. v. McCartney,* 896 F.2d 1138 (8th Cir. 1990).
[41] 457 U.S. 496 (1982).
[42] *Hudson v. Campbell,* 663 F.3d 985 (8th Cir. 2011).

Circuit case in which *Younger* abstention applied, it found that abstention was proper here.[43]

It also held that the proceeding was ongoing because the plaintiff had not exhausted administrative remedies. The Court failed to explain, however, how this holding did not conflict with *Patsy*.[44]

Colorado River: While states regularly invoke *Colorado River* in support of motions to dismiss Medicaid claims, it is not common for courts to abstain on this ground.[45] In the past several years, however, there have been several Medicaid cases in which courts relied upon *Colorado River* to abstain. In *B.D. v. Dazzo,* the District Court for the Eastern District of Michigan granted a motion to dismiss based on its decision to abstain from hearing claims based on denial of Medicaid home and community-based services (HCBS). Because there was a currently pending state court case involving substantially the same parties and claims, the state court case was initiated before the federal case, and the plaintiff had previously been successful in a similar state court case, the court found abstention appropriate.[46] On rehearing, the Court reversed its decision to dismiss the case and instead stayed it pending the outcome of the state proceeding.[47] Similarly, in *Lundergan v. Ariz.,* the District Court abstained from hearing claims challenging denial of HCBS based on *Colorado River* because an administrative hearing involving the same denial of service was pending. The Court stayed the Medicaid claims to await the outcome of the administrative hearing. [48]

Burford: Courts do not usually find *Burford* abstention proper in Medicaid cases because claims are based on federal law and Medicaid is, in part, a federal program.[49]

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[43] The Court noted that the First, Third, Fourth, and Tenth Circuits require exhaustion when coercive proceedings are underway. *See Hudson,* 653 F.3d at 987 (citing cases).
[44] *Id.* at 988.
[45] *See, e.g., RioGrande Cmty. Health Ctr. v. Rullan,* 397 F.3d 56 (1st Cir. 2005); *Chase Brexton Health Servs. v. Maryland,* 411 F.3d 457 (4th Cir. 2005); *Washington v. DeBeaugrine*, 658 F. Supp. 2d 1332 (N.D. Fla. 2009).
[46] *B.D. v. Dazzo,* No. 11-15347, 2012 WL 2711457 (E.D. Mich. July 9, 2012).
[47] *B.D.,* No. 11-15347 (Aug. 9, 2012) (order granting reconsideration, vacating dismissal, and staying proceedings).
[48] No. CV-1211-PXH-GMS, 2010 WL 2991588 (D. Ariz. July 26, 2010). *See also Drury v. Maram,* No. 07-3024, 2008 WL 835297 (C.D. Ill. Mar. 27, 2008) (citing *Colorado River* in support of decision to stay based on pending parallel federal action).
[49] *See, e.g., Romano v. Greenstein,* Civil Action No. 12-469, 2012 WL 1745526 (E.D. La. May 16, 2012) (finding *Burford* abstention not warranted due to federal nature of Medicaid claims); *Providence Pediatric Medical Daycare, Inc. v. Alaigh,* 799 F. Supp. 2d 364 (D.N.J. 2011) (same); *Parents League for Effective Autism Services v. Jones-Kelley*, 565 F. Supp. 2d 905 (S.D. Ohio 2008) (same), *aff'd on other grounds,* 339 F. App'x 542 (6th Cir. 2009); *Washington v. DeBeaugrine*, 658 F.Supp.2d 1332 (N.D. Fla. 2009) (same, in case including federal due process claims); *see also* Somers, *Update on Federal Court Access – Abstention* (*supra* n. 1].

Two Medicaid cases in which the courts did abstain, decided in the mid-1990s, have thus far not influenced other courts to follow their lead.[50]

Rooker-Feldman: States have raised the *Rooker-Feldman* argument in a number of Medicaid cases over the past decade. Most courts have held that the doctrine did not apply.[51] In *Mazin v. Steinberg,* the state Medicaid agency had denied plaintiff's application for eligibility. The plaintiff filed for an administrative hearing, lost, and appealed to Delaware Superior Court. When that Court dismissed the plaintiffs' appeal, he petitioned for Supreme Court review – but his appeal was rejected because it was filed one day late. The Federal District Court held that the suit was barred by *Rooker-Feldman* because plaintiff was essentially seeking to challenge the state courts' dismissal of his appeal.[52]

The Federal District Court for the Southern District of Ohio, in *Immel v. Lumpkin,* applied *Rooker-Feldman* in a case that involved only state administrative proceedings.[53] The Court did not explain why it expanded the reach of the doctrine beyond state court proceedings. The plaintiff filed for an appeal to the Sixth Circuit but he died while the appeal was pending. The Sixth Circuit instructed the District Court to vacate the opinion, which it did.[54] Thus, the Sixth Circuit had no opportunity to issue an opinion correcting this apparently erroneous extension of *Rooker-Feldman*.

Conclusion and Recommendations

In light of these recent decisions to abstain, advocates should expect to see state attorneys raise abstention arguments with greater frequency and vigor. The *Hudson* decision has not attracted much attention thus far. Given that it is a Court of Appeals case and Medicaid abstention decisions are relatively scarce, however, it is likely only a matter of time before state attorneys began to focus on it. In addition, the recent decisions applying *Colorado River* and *Rooker-Feldman* to Medicaid claims are likely to attract attention.

When services or eligibility are being terminated, advocates have a strong incentive to file a request for an administrative hearing in order to maintain services or eligibility pending the appeal. Advocates should be aware that a pending administrative hearing is increasingly likely to draw an abstention argument. Moreover, even if a

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[50] *See Bethpage Lutheran Service, Inc. v. Weicker,* 965 F.2d 1239 (2d Cir. 1992) (finding *Burford* abstention proper and distinguishing contrary decisions involving "systemic" Medicaid challenges); *Osteopathic Hosp. Founders Ass'n v. Splinter,* 955 F. Supp. 1351 (N.D. Okl. 1996) (same).

[51] *See, e.g., Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D. 277, 289 (N.D. Ga. 2003); *Sanders ex rel. Rayl v. Kan. Dep't of Social and Rehab. Servs.,* 317 F. Supp. 2d 1233, 1240 (D. Kan. 2004).

[52] Civ. Act. No. 07-81-SLR, 2007 WL 1202855 (D. Del. Apr. 19, 2007). In a somewhat questionable ruling, the Court held that any constitutional claims were also barred by the Eleventh Amendment.

[53] *Immel v. Lumpkin,* No. 2:07–cv–1214, 2009 WL 173862, *6 (S.D. Ohio Jan. 23, 2009), *recon. den.* 2009 WL 2255225 (July 27, 2009).

[54] *Immel,* No. 2:07-cv-1214 (Jan. 3, 2011) (order vacating opinion and dismissing case).

hearing request is withdrawn or if a final administrative decision is obtained, if courts follow the lead of *Hudson,* they may find that the administrative proceedings are ongoing. This may counsel against filing for an administrative hearing if advocates plan to file a federal case. Yet, it is difficult to turn down the guaranteed maintenance of services – the alternative would be to file in federal court and seek a TRO, which can be difficult to obtain. Advocates will need to carefully review the law in their jurisdictions to evaluate the risk of a court abstaining.

If advocates have determined that the problem they are trying to remedy is beyond the expertise or power of the state administrative process to address, they should work to find plaintiffs for whom they do not need to file an administrative hearing or an organizational plaintiff, or both.

Advocates should resist the urge to file a suit in federal court when their client has become tangled up in the administrative process, as was the case in *Hudson* and *Immel.* It is frustrating when the administrative proceeding does not yield results, particularly where a beneficiary or applicant has actually prevailed but the state agency will not enforce or recognize the decision. Instead of turning to the federal court to try to impose order on the proceedings or force the state agency to apply a favorable decision, advocates should consider filing a petition for mandamus or similar action in state court.

If a state makes a motion to abstain based on *Colorado River,* in addition to opposing the arguments on the merits, advocates argue in the alternative that the Court stay the case pending the outcome of the state proceeding, rather than dismissing it.

Finally, more than ever before, advocates should carefully evaluate whether the state administrative procedure and appeal to state court can provide their clients with the remedy that they need.