

MAY 18 2017

OFFICE OF
ADMINISTRATIVE HEARINGS

May 8, 2017

Dear Chief ALJ Lee and Deputy Chief ALJ Pesik,

I am writing to comment on WSR 17-09-084, creating WAC 10-08-055: *Suitable Representation*.

I commend you for moving forward with the adoption of this important regulation. In my over 30 years as an Administrative Law Judge, at times I was deeply troubled by having pro se Appellants appear in front of me, who did not appear to understand what was at issue, nor were they able to competently represent themselves. One litigant who comes to mind was a developmentally disabled man accused of abusing a fellow developmentally disabled person. I had very serious concerns that the Appellant in this hearing did not understand what was at issue, the accusations against him or the consequences to him if he did not prevail in the administrative hearing, nor did he have the ability to read the applicable law and evidence to argue his case. I found this hearing to be deeply disturbing and not representative of what the basic elements of due process require.

As you know, the Washington Supreme Court adopted GR 33, titled "*Requests for Accommodation by Persons with Disabilities*", in 2007. Section (a)(1)(C) provides for the appointment of an attorney, at no expense to the person with a disability, as a possible accommodation. Thus the adoption of WAC 10-08-055 is not a new idea, but rather one which is modeled after action taken 10 years ago by our state Supreme Court which applies in the Courts of the State of Washington.

One concern which has been raised by some people about this new rule is the cost of implementing it. The Pierce County Superior Court has been a leader in implementing GR 33. Before I retired in December 2015, I had a number of conversations with Bruce Moran, an administrator for that court responsible for the implementation of GR 33. I shared my specific findings with Chief Lee at the time. The experience of that court was that GR 33 did not create a large expense for their court.

Additionally, in May 2011, the Washington State Access to Justice Board Justice without Barriers Committee issued "*Ensuring Equal Access for People with Disabilities: A Guide for Washington Administrative Proceedings*". This Guide was published with funding by the Washington State Bar Association Administrative Law Section and endorsed by all 3 law schools in Washington and numerous other organizations, including the Washington State Office of Administrative Hearings. This Guide provides a framework and many excellent training and resource materials which should be very helpful to the Office of Administrative Hearings in implementing WAC 10-08-055.

I can see that changes were made to this rule since I retired. The rule appears to be well thought out and sound.

(1) **One general comment** I wish to make is that I think appointing attorneys or possibly paralegals with poverty law knowledge and experience for public assistance hearings is by far the most efficient and effective source of representation for Appellants in these hearings. These are hearings generated by appeals of decisions of the Department of Social and Health Services and the Health Care Authority. It took me a number of years to become familiar and competent with the volume of this ever-changing and complex body of law. I have concerns about an attorney without poverty law experience and knowledge being able to competently represent Appellants in these hearings.

(2) **I also have a couple of comments regarding Sections (11)(b)(i) and (ii).**

Section (11)(b)(i)

I suggest that section (11)(b)(i) be amended to read:

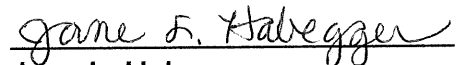
“knowledge of or the ability to attain knowledge of the procedural and substantive (new language) rules and law;”

Section (11)(b)(ii)

I think the words knowledge of the “**substance at issue**” is ambiguous. Do you mean the issue(s) for the hearing? If not, what do you mean?

Again, I commend you on the decision to follow the lead of the state Supreme Court and adopt this rule which is so important to ensuring equal access to justice for some of the most vulnerable citizens in Washington State.

Sincerely,



Jane L. Habegger

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Washington State Office of Administrative Hearings