



1 N Charles St, Ste 200  
Baltimore, MD 21201  
(410) 625-9409  
fax (410) 625-9423  
www.publicjustice.org

Ed Pesik  
Deputy Chief ALJ  
PO Box 42488  
Olympia, WA 98504-2488

May 8, 2017

Mr. Pesik,

John Nethercut  
Executive Director

Debra Gardner  
Legal Director

**ATTORNEYS**

Monisha Cherayil  
Sally Dworak-Fisher  
Sulma Guzman  
Matthew Hill  
Anthony May  
John Pollock  
Renuka Rege  
Russell R. Reno, Jr.  
Camilla Roberson  
David Rodwin  
Zafar S. Shah

**PARALEGALS**

Levern Blackmon  
Certified Paralegal

Jonathan Colarelli  
Ralikh Hayes  
Hannah Walsh

Brenda Midkiff  
Director of Administration

Jennifer Pelton, CFRE  
Development Director

Erin Brock  
Development Manager

Rebecca Reynolds  
Development Associate

I am writing to provide public comment on WAC 10-08-055, governing Suitable Representations in administrative proceedings. I am a Staff Attorney with the Public Justice Center who serves as the Coordinator of the National Coalition for a Civil Right to Counsel. The NCCRC is comprised of nearly 300 participants in 38 different states who work to advance the right to counsel in civil cases implicating basic human needs.

The NCCRC strongly supports enactment of the proposed WAC, as it will ensure that litigants with disabilities have an equal opportunity to meaningfully participate in administrative proceedings. Washington State has already taken a leadership role with the enactment of GR-33, which applies to judicial proceedings, and the WAC is a necessary corollary to cover administrative proceedings in which basic human needs are also often at stake. The NCCRC's comments below are thus just minor suggestions for clarifying some possible ambiguities in the draft language.

- Section 3 states the judge must delay commencing or resuming the proceeding until the accommodation request is “addressed.” It is unclear whether “addressed” includes only the initial determination or also appeals of a denial to an ALJ pursuant to Section 17. We believe it should be the latter, and so suggest that the language is amended to say, “... until the accommodation is addressed, including through any appeals pursuant to Section 17.”
- Section 5 states that records pertaining to “the decision whether to appoint a representative” are kept confidential, but we feel it is important to ensure confidentiality as to the fact of the request for accommodation itself. We therefore suggest the following amendment: “All records pertaining to a party’s request for a suitable representative and the decision whether to appoint a suitable representative shall be kept confidential ...”
- Section 7 refers to the fact that the existing assistance of a legal guardian, near relative, or friend shall not affect the “meaningfully participate” determination. We are not certain whether a “next friend” should be included in this list. The concept of next friend is utilized in Washington law relating to minors. See e.g. Wash. Stat §§ 26.50.020(2)(b) (for domestic violence relief, “A person under sixteen years of age who is seeking relief under subsection (1)(b) of this section is required to seek relief by a parent, guardian, guardian ad litem, or next friend”); 12.04.140 (“Except as provided under RCW 26.50.020, no action shall be commenced by any person under the age of eighteen years, except by his guardian, or until a next friend for such a person shall have been appointed”); *In*

*re Guardianship of Ivarsson*, 375 P.2d 509, 510 (Wash. 1962) (“If there is an aggrieved or interested person entitled to appeal, it is the ward. It is her money that is being so freely and generously distributed. Her right to appeal must be conceded; but inasmuch as she is unable to exercise it, there must be a determination as to who is entitled to appeal in her behalf. The right of appeal by ... ‘next friend,’ in such circumstances, has long been recognized.”)

- Section 7(a) requires consideration of whether the party has a “rational and factual understanding” of “the privilege of representation by counsel.” For clarity’s sake, we suggest changing this to “the privilege benefit of representation by counsel.”
- For purposes of Section 8, we are uncertain whether, if a person has a legal guardian, the guardian would be the “party”, and/or whether the guardian would or could be the one seeking an accommodation. We are also unsure as to whether, if the guardian is the party, the judge would pose questions to the guardian or to the ward. If this is determined to be a legitimate question, we suggest that a definition of “party” be added to Section 2.
- We suggest a small rewording of Section 8 for the sake of clarity: “ ... the agency ADA coordinator will commence an interactive process with the party to determine the type of accommodation required to allow the party to meaningfully participate in the hearing process; specifically whether an alternative accommodation can adequately address the party’s specific disability-related limitations; or whether a suitable representative is the most appropriate accommodation.”
- We suggest cross-referencing Section 21’s training requirements in Section 11 by making the following amendment to Section 11(c): “An individual is not eligible to be appointed as a suitable representative if the individual (i) is employed by the office of administrative hearings; (ii) ~~or~~ is employed by another state agency and prohibited by law from representing the opposing party; or (iii) has not completed the uniform qualification training specified in subsection (21).”
- Section 11(d) seems as though it would function more clearly as its own section, rather than as a subsection.
- For clarity’s sake, we suggest amending Section 13 to read, “Should the party accept the appointment of a suitable representative, the suitable representative will file ...”
- Section 14 states the suitable representative can ask for continuing representational accommodation. We believe the party with the disability also should be able to make such a request. We therefore suggest the following amendment: “If a party with a disability or their suitable representative files a petition for review ~~for a party with a disability, they suitable representative~~ may ask for continuing representational accommodation with the reviewing agency’s ADA coordinator or pursuant to Washington rules of court general rule 33.”
- Section 15 appears to suggest the appointment can be unilaterally terminated by the suitable representative without notice. We suggest adding the following language to the end of Section 15: “Should the suitable representative terminate representation prior to settlement or hearing, the suitable representative shall notify the party with a disability and the ADA coordinator.”

- Because Section 17 immediately follows a section addressing the ADA coordinator making a determination relating to continuing representation, it may create the impression that Section 17 addresses only a party's dissatisfaction with that continuing representation decision, as opposed to the initial appointment decision. We suggest the following wording to clarity's sake: "If the party is not satisfied with ~~the~~ any decision by the agency ADA coordinator ..."

We appreciate the opportunity to provide these minor suggestions, and sincerely hope that this rule is enacted so as to fully protect the needs and rights of Washington's vulnerable population.

Sincerely,



John Pollock

Coordinator, National Coalition for a Civil Right to Counsel