



May 26, 2017

Ed Pesik
Deputy Chief Administrative Law Judge
Washington State Office of Administrative Hearings
PO Box 42488
Olympia, WA 98504-2488

Delivered via email to: Ed.pesik@oah.wa.gov

Re: Comments on Representational Accommodation Proposed Rule - WSR 17-09-084

Dear Deputy Chief ALJ Pesik:

I represented C.B., the Korematsu Center at Seattle University School of Law, and Disability Rights Washington in the Petition for Rulemaking asking for an assessment process to determine the need for a representational accommodation in OAH administrative hearings. As you know, the petition was granted in September 2016. A five month process for drafting the rule was commenced that included a wide range of interest groups from agencies using OAH for its initial hearings to legal advocates for people with disabilities to members of the WSBA Access to Justice Board to the Governor's Office. The proposed rule in WSR 17-09-084 is the result of that collaborative process. I write on behalf of petitioners and myself to give our full support to the rule and urge its immediate adoption.

The proposed rule does all of the things we requested in the Petition for Rulemaking. It requires that OAH do an individualized and fact-specific evaluation of the effects of an appellant's disability on the ability to represent him or herself at hearing and that OAH provide a representational accommodation when the evaluation shows the need for that reasonable accommodation. It sets out clear criteria for the evaluation of the need for representation; provides for an appeal if initially denied; creates strong qualification standards and training for those who serve as suitable representatives; allows for an ALJ, the referring agency, or appellant to request a representational accommodation at any stage of the proceeding; and provides for the collection of data to review the effectiveness of the new rule.

When I filed the Petition for Rulemaking with OAH last June, 2016, I wrote:

The granting of this petition by OAH is critical to the access to administrative justice by appellants with disabilities that prevent them from self-representation. OAH appellants have gone too long without receiving the same ADA representational accommodations that they are legally entitled to and receiving in the Washington judicial branch courts. Granting this petition for rulemaking will remedy this longstanding injustice.

I am happy to report that, by promulgating this new and thoroughly considered rule, OAH has not only removed a major obstacle to administrative justice but has also become a leader for other state agency hearings offices to follow in removing barriers to justice for people with disabilities.

While the language of the rule itself is critically important to the evaluation and granting of representational accommodations for those in need, it is equally important that the implementation of the rule be rigorous and well monitored. There must be a well-trained and readily available pool of suitable representatives, including attorneys, paralegals, and lay advocates, and the resources to provide for this accommodation. I look forward to working with OAH to develop training materials, application forms and FAQs for people with disabilities who apply for this accommodation, and to monitor the implementation of the rule to make sure that suitable representatives are being appropriately and timely granted.

Thank you for implementing this representational accommodation rule. It is not only legally mandated and critically important to access to justice in administrative proceedings determining eligibility for brutal needs benefits, it will increase the efficiency of the administrative hearing process and decrease the number of frivolous appeals.

Best regards,



Lisa Brodoff
Associate Professor of Law
Director of the Clinical Program