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## YEARS OF INNOVATIVE ADMINISTRATIVE JUSTICE

BY JOHNETTE SULLIVAN

*“Hearings shall be conducted with the greatest degree of informality consistent with fairness and the nature of the proceeding.”<sup>1</sup>*

An innovation from its beginning in 1982, the Washington State Office of Administrative Hearings (OAH) is celebrating its 40th year of providing administrative justice to Washingtonians. OAH received over 100,000 appeals in calendar year 2021 and more than 76,000 in 2022. It resolved disputes involving actions by 41 different state agencies.<sup>2</sup> This article summarizes the growth of OAH, with a particular focus on its innovative rule to appoint “suitable representatives” to accommodate self-represented parties with disabilities.

### HISTORY

In the spring of 1979, the WSBA Board of Governors appointed an Administrative Law Task Force in response to concerns of the House Committee on Ethics, Law and Justice. People had alleged that the quasi-judicial hearing process used by administrative agencies was unfair. In part, this was because adjudicators were employed by the agencies responsible for the substantive decisions in dispute, raising questions about their

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**THE WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE  
HEARINGS (OAH) CONTINUES  
ITS MISSION TO HEAR AND  
INDEPENDENTLY RESOLVE  
DISPUTES BETWEEN THE  
PUBLIC AND STATE AGENCIES  
... HOLDING MOST HEARINGS  
BY PHONE, AND OTHERS  
IN PERSON AT LOCATIONS  
THROUGHOUT THE STATE.**





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impartiality. There were also concerns that the growing complexity and diversity of individual agency procedural rules governing the hearing process was making the system less accessible.<sup>3</sup> The task force found that the system of administrative adjudications needed increased openness, fairness, quality, uniformity, and consistency. It recommended<sup>4</sup> legislation that would create an independent, centralized adjudication agency to increase accessibility to the public, expedite and cut red tape, and reduce costs.

The WSBA sponsored and supported the 1981 legislation<sup>5</sup> that created OAH as a central panel<sup>6</sup> adjudicatory agency. The bill, signed into law by Gov. John Spellman, became effective partly in 1981 and wholly in 1982. OAH is under the direction of a chief administrative law judge (ALJ) appointed by the governor with the advice and consent of the Senate. The appointment is for a term of five years.<sup>7</sup> The first chief ALJ was David LaRose, who served for 15 years. He was followed by Lisa Brodoff, Art Wang, Roosevelt Currie, and Selwyn Walters. Chief ALJ Lorraine Lee has led OAH since July 1, 2009.

**OAH TODAY**

Under Chief Lee's direction, OAH continues its mission to hear and independently resolve disputes between the public and state agencies with an impartial, quick, and easy-to-access process. ALJs hold most hearings by phone, and others in person at locations throughout the state. OAH uses a single case management system for all programs.<sup>8</sup> It converts all case records to electronic format and uses a secure online OAH Participant Portal for filing. In some programs, parties can file requests for hearing using a form on the OAH public website.<sup>9</sup> Lawyers can use OAH's public website to file an online notice of appearance.

**Response to the pandemic.** OAH pivoted to teleworking at the start of the pandemic, leveraging technology to enable a mobile workforce. ALJs continued to hold hearings by telephone and added videoconference alternatives. The Participant Portal allowed

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online access to case records by parties and employees. Over 75,000 people have used the Participant Portal since it went live in February 2020. Primarily through its state-wide customer service center, OAH answered questions and provided accurate information on the status of an appeal, even as annual appeals increased from under 50,000 to a peak of 102,153 in 2021.

OAH reopened its physical facilities to the public in March 2022; however, the number of requests for in-person hearings remains low. In the year after OAH reopened, ALJs held nearly 40,000 proceedings, of which fewer than 110 were convened in person. OAH anticipates more requests by parties to participate by videoconference and is planning better technology options in its four facilities—Olympia, Tacoma, Seattle, and Spokane Valley—for in-person and hybrid proceedings. OAH is also upgrading its hearing facilities by adding caucus rooms adjacent to its hearing rooms.

**Taking on the unemployment insurance backlog.** OAH is working through a backlog of unemployment insurance appeals. In the first three months of 2022, the Employment Security Division sent nearly 30,000 appeals to OAH. That number was equal to an entire year's worth of appeals before the pandemic.

**Increasing meaningful participation.** Across all caseloads and programs, OAH has been updating its templates to simplify orders and notices for consistent appearance. For example, in most programs the first page of the judge's order includes a

summary of the outcome. Parties speak over 100 languages. Information about rights in English and the party's primary language is at the top of notices and orders. Improved language access supports OAH's strategic diversity, equity, and inclusion (DEI) goal to increase meaningful participation.

Parties have told ALJs they felt interrupted more than understood when communicating through an interpreter. In early 2023, OAH completed a pilot project that used Spanish-speaking ALJs to hold unemployment insurance hearings with Spanish-speaking claimants without an interpreter. One hundred hearings were held; results and feedback about the project are now being evaluated. About the project, Chief ALJ Lee said:

This pilot supports OAH's strategic DEI objective of expanding language access. Results indicate improvements in claimants' participation, access, and understanding of the hearing process when the Administrative Law Judge communicated directly with them in Spanish. This innovative approach is a new tool for promoting equitable access for parties in OAH hearings.<sup>10</sup>

#### SUITABLE REPRESENTATIVE ACCOMMODATION

OAH's goal to accord everyone the right to be heard includes parties with disabilities. In January 2018, OAH implemented a rule to provide "suitable representatives" as a form of accommodation under the Americans with Disabilities Act (ADA). The rule was in response to a June 2016 petition for rulemaking filed by three petitioners: a Washington resident, Disability Rights Washington, and Seattle University School of Law Fred T. Korematsu Center for Law and Equality. Under this rule, OAH's ADA coordinator determines if a party has a disability and, for a party with a disability, the reasonable accommodations necessary to accord meaningful participation in the hearing process. When other accommodation measures are not sufficient and a suitable representative accommodation is necessary, the appointment is made by the chief ALJ. OAH is not aware of a similar rule in any other adjudicatory agency, in Washington or nationwide.

In comparison to General Rule (GR 33), OAH's accommodation process is informal. A verbal or online request is sufficient. All

employees, including ALJs, are trained to identify and assist parties with disabilities. Examples of accommodations other than a suitable representative accommodation include modifying the hearing schedule, allowing extra breaks, printing notices and orders in larger font, access during the hearing to an assisted listening device or a real-time transcript, alternate methods of expressive communication, providing blank declaration forms, and holding the hearing at a home or facility. The ADA coordinator's records are kept separate from the case record and are not accessible to the ALJ or other parties. Where the ADA coordinator denies an accommodation request, the party may file a grievance. WAC 10-24-010.

Between January 2018 and March 2023, the ADA coordinator determined that 30 individuals were eligible for a suitable representative accommodation. The type of disabilities and needs vary among these individuals, but nearly all were receiving Supplemental Security Income and/or Social Security Disability Income. OAH was not able to provide a suitable representative for 12 eligible parties. A few individuals rejected the suitable representative and the ADA coordinator was not able to find another individual to serve. One individual was appointed a suitable representative; however, in appeals filed the next year two appointed representatives withdrew. The ADA coordinator was unable to find that party another representative.

Parties' county of residence can also be a challenging limitation. Parties reside across the state and their appeals involve many programs. Most potential suitable representatives were limited by geographical or case-type restrictions. For example, one retired ALJ has regularly volunteered to serve as a suitable representative; however, in over four years not a single eligible party was a resident in the counties in which he could serve. Fortunately, some pro bono attorneys accepted more than one appointment. In addition, OAH contracted with Solid Ground and Northwest Justice Project to appoint suitable representatives.<sup>11</sup>

Another challenge is that the ADA coordinator's decision to appoint a suitable representative is based on a party's unique disability-related needs without regard to



#### SIDEBAR

## What to Know If Your Client Has a Hearing Before OAH

- OAH has an online Participant Portal in which the client can file exhibits and review the pleadings in the case. OAH staff will give them a code to access the Portal. Written instructions and a video on using the Portal are also available on the OAH website.
- Let OAH know if the client needs an interpreter or ADA accommodation.
- All evidence should be presented at the hearing because the client might not be allowed to add evidence on judicial review.
- The client should not delay preparing for the hearing. Some case types have short deadlines.
- If the client needs to request a continuance of the hearing, follow the instructions in the hearing notice or call the customer service center at 360-407-2700.
  - If the client has an emergency on the day of hearing, call the customer service center.
  - If the judge doesn't come on the line within 10 minutes, call the customer service center.
- OAH will not give any information to a lawyer who has not filed a notice of appearance.

**LEARN MORE >** The OAH website explains how to manage and prepare for the case: [www.oah.wa.gov](http://www.oah.wa.gov).

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## SIDEBAR

# Suitable Representatives— How You Can Help

- WSBA members who have practiced before OAH, or who complete a training module to learn about practice before OAH, may qualify to be a suitable representative.
- The program types with greatest needs are developmental disabilities, special education, Medicaid, vocational rehabilitation, child support, and adult protective services.
- Geographically, the areas of most need have been Clark, Cowlitz, Kitsap, Jefferson, Clallam, Snohomish, Skagit, and Whatcom Counties, and the southeast corner of the state. When videoconference is available between the party and suitable representative, there may be fewer geographical limitations.
- If you are interested in learning more or volunteering to be a suitable representative, please contact the OAH ADA coordinator at OAH\_ADACoordinator@oah.wa.gov.

**LEARN MORE >** For questions or additional information, contact OAH at 360-407-2700 or 800-583-8271 or visit its website at [www.oah.wa.gov](http://www.oah.wa.gov).

## 40 Years of Innovative Administrative Justice

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the merits of their appeal. Disregard for the merits and whether an appeal is likely to be successful can present an ethical issue for lawyers concerned about meeting their professional duty of candor toward the ALJ. Further, parties sometimes struggle to understand the limited scope of OAH's authority and that the suitable representative cannot help with other legal issues. Some parties have rejected a suitable representative as not being neutral or not giving good advice if the representative appeared to agree with the decision under appeal.

OAH has failed to establish the rule's anticipated "network"<sup>12</sup> of individuals qualified for suitable representative appointments. A significant impediment to establishing the network is lack of professional liability coverage, an issue that most often impacts non-lawyers and lawyers who are retired or employed by the military or other entities. During the pandemic, pro bono lawyers, volunteer legal clinics, and legal service organizations saw an increased demand for their services. That additional work, combined with family responsibilities and the complications of school and office closures, meant fewer qualified candidates were available to accept suitable representative appointments.

Five years after adopting the suitable representative rule, OAH has learned there are no easy, ready solutions to address the varied needs of the small group of eligible parties.<sup>13</sup> OAH is committed to continuing efforts to provide suitable representatives by contracting or partnering with others to provide professional liability coverage and by expanding the number of qualified individuals who can cover a wide variety of geographical areas and case types. We encourage all lawyers (and for child support cases, all Limited License Legal Technicians) to consider this worthwhile opportunity to support administrative justice for all.

## CONCLUSION

With more than 40 years of experience operating as a central panel adjudicatory agency, OAH makes a difference to Washingtonians whose appeals come before it for

resolution. OAH provides a safe place for people to disagree and dispute the actions and decisions of state and local government agencies. OAH looks forward to continued support and input from the WSBA and the legal community, the public, other agencies, community members, and advocates as it builds upon past progress. [BN](#)

## NOTES

1. RCW 34.12.010, effective July 1, 1982.
2. OAH counts an appeal as resolved when the time to file a petition for review of the ALJ's initial or final order has expired. The number of state agencies that send appeals to OAH fluctuates each year. Some state agencies send one appeal every few years. In addition to appeals from state agencies, OAH resolved disputes involving local governments in five whistleblower cases in 2022.
3. 1982 Legislature Biennial Budget Planning summary of OAH history.
4. Report of Administrative Law Task Force by co-chairs Dean Little and Robert Felthous.
5. ESHB 101 (codified at Chapter 34.12 RCW).
6. Within the executive branch of government, a central panel agency is separate from the agencies whose decisions are in dispute. A central panel agency provides a framework for fair, impartial, high-quality decision-making that is cost-effective and timely.
7. RCW 34.12.010.
8. OAH has nearly 300 programs. Examples include: eligibility for cash benefits for needy children and adults who seek disability; Medicaid; paid family medical leave; establishing a child support order; licensing a lottery retailer; regulating consumer loan companies; toll violations; special education; findings by adult protective services; civil penalties against electrical contractors; license revocation of pesticide applicators; liquor and cannabis licensing; wage payment violations; and, local government whistleblowers.
9. <https://oah.wa.gov>.
10. OAH Annual Report 2022, p. 19.
11. Since the pandemic, the Unemployment Law Project has represented over 25 claimants in response to a request from OAH's ADA team without participating in the suitable representative appointment process. Northwest Justice Project and TeamChild also responded to requests from OAH's ADA team to screen potential clients without participating in the appointment process.
12. WAC 10-24-010(17).
13. By the time this article is published, a proposed amendment to WAC 10-24-010 is anticipated that will include plain language, clarify process for making requests, and remove required data gathering and reporting that have expired.