

Role & Responsibilities of a Suitable Representative

The Office of Administrative Hearings (OAH) addresses in rule how it handles accommodation requests under the federal Americans with Disabilities Act (ADA) for a party in a hearing before OAH. When OAH receives an accommodation request for representation in adjudicative proceedings before OAH, it applies WAC 10-24-010 (access to OAH facilities and services).

A. Defined

A “suitable representative” is an individual who is qualified under the rule to provide the assistance needed to enable an otherwise unrepresented party with a disability to meaningfully participate in the adjudicative proceeding. WAC 10-24-010(2)(b).

B. Qualifications

The ADA coordinator at OAH identifies an individual to be appointed as a “suitable representative” after considering the:

- Needs of the party identified in the assessment;
- Party’s preferences;
- Knowledge, skills and abilities of the individual being considered, including
 - Knowledge of or the ability to attain knowledge of the procedural rules;
 - Knowledge or the ability to attain knowledge of the substance at issue;
 - Experience and training in advocating for people with disabilities; and
 - Availability to meet the timelines and duration of the particular proceeding.

A candidate interested in being appointed as a suitable representative will provide OAH with a written statement describing qualifications, preferences, restrictions or limitations.

C. Pre-appointment process

Step 1. The ADA coordinator will describe to the candidate the party’s needs, the case type, case status, time or duration expectations, whether the hearing is by telephone or in-person, and other relevant information. The ADA coordinator will not reveal any personally identifying information about the party. If the candidate is interested in being appointed, the candidate will authorize the ADA coordinator to identify the candidate to the party with a disability, including the candidate’s qualifications.

Step 2. The ADA coordinator will ask the party with a disability to accept the candidate. The party’s acceptance will be shown in writing or other form consistent with the party’s disability. The party will authorize disclosure of the party’s personally identifying information to the

candidate. The ADA coordinator will present the acceptance to the candidate. The candidate will show acceptance of the appointment in writing.

- The ADA coordinator will facilitate introductions between the party and the suitable representative candidate.
- If a party requests the opportunity to converse with or ask questions of the candidate prior to acceptance, the ADA coordinator will make the necessary arrangements.

Step 3. The Chief ALJ will sign an appointment letter. A copy will be provided to the party with a disability.

D. Post-appointment process

The ADA coordinator will arrange for the appointed suitable representative to have access to the OAH participant portal so they may have access to the party's case record, including all notices or orders issued by OAH, documents submitted to OAH, and audio recordings. Except with the consent or participation of the party with a disability, the suitable representative will have no further communication about the case with the ADA coordinator or Chief ALJ.

The suitable representative will file a notice of appearance under WAC 10-08-083 or other applicable rule or law to inform all parties and representatives of record of the suitable representative's name, address, and telephone number.

E. Termination of appointment

The individual's appointment ends when the time expires to file a petition for review, unless earlier terminated by the party or the suitable representative. The suitable representative will file a notice of withdrawal under WAC 10-08-083 or other applicable rule or law if the appointment is terminated prior to the deadline for the petition for review.

F. Responsibilities of a suitable representative

At all times, even after termination of the appointment, the suitable representative is responsible to maintain the privacy and confidentiality of the party. Upon appointment, the suitable representative will promptly:

1. **Communicate with the party** about the case, what is at stake in the dispute, and the party's desired outcome or remedy;
2. **Review the case record provided by OAH** in a professional and timely manner, making all reasonable efforts to prepare for hearing without delay to avoid or minimize continuances;

3. **Gather information** necessary to resolve the dispute, identify and prepare witnesses, or present exhibits at hearing;
4. **Discuss the potential for settlement** with the party, and when appropriate, participate in mediation or negotiate a settlement agreement;
5. **File and respond to motions;**
6. **Prepare for hearing**, including to:
 - a. Mark and file exhibits;
 - b. Prepare the party and other witnesses for testimony;
 - c. Prepare questions for cross examination;
 - d. Prepare brief oral opening and closing statements.
7. **Appear and participate** in motion conferences, prehearing conferences, and the hearing;
8. **File post-hearing documents** as requested or allowed;
9. **Review the ALJ's decision** with the party;
10. When necessary, **discuss with the party next steps in the appeal** including reconsideration and petition for review; and
11. **Prepare and file a request for reconsideration or petition for review**, if requested.
12. **Promptly notify the ADA coordinator and the party** about:
 - a. Any adverse action related to the individual's certifications or licenses;
 - b. A decision to withdraw as the suitable representative.

The suitable representative shall **participate in training**. The Chief ALJ has established uniform qualification training for persons selected as suitable representatives under the Model Rules. The individual is responsible to participate and complete the training. The estimated time commitment for training is 2 to 3 hours.

In addition, OAH encourages suitable representatives to **participate in a post SR appointment review**. After the appointment terminates, OAH may ask the suitable representative for feedback about how to improve the process of implementing WAC 10-24-010 to better serve disabled parties in administrative hearings.