



PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with RCW 34.05.330, the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at http://apps.leg.wa.gov/wac/default.aspx?cite=82-05.

CONTACT INFORMATION (please type or print)

Petitioner's Name C.B., a resident of Washington state; Fred T. Korematsu Center for Law and Equality; et al
Name of Organization Ronald A. Peterson Law Clinic
Mailing Address 1215 E. Columbia Law Annex, PO Box 222000
City Seattle State WA Zip Code 98122
Telephone 206-398-4145 Email

COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
• Provide relevant examples.
• Include suggested language for a rule, if possible.
• Attach additional pages, if needed.
• Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: http://www.leg.wa.gov/CodeReviser/Documents/RClst.htm.

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: Office of Administrative Hearings

[X] 1. NEW RULE - I am requesting the agency to adopt a new rule.

[X] The subject (or purpose) of this rule is: To provide an assessment for representational accommodations for appellants in administrative hearings

[X] The rule is needed because: Please see attached Memorandum in support of Petition for Rulemaking

[X] The new rule would affect the following people or groups: Administrative hearing appellants with disabilities affecting their ability to self represent

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: _____

I am requesting the following change: _____

This change is needed because: _____

The effect of this rule change will be: _____

The rule is not clearly or simply stated: _____

3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: _____

(Check one or more boxes)

It does not do what it was intended to do.

It is no longer needed because: _____

It imposes unreasonable costs: _____

The agency has no authority to make this rule: _____

It is applied differently to public and private parties: _____

It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: _____

It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____

Other (please explain): _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

**BEFORE THE WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In re:

C.B., a Washington State resident;
The Fred T. Korematsu Center at Seattle
University School of Law; and
Disability Rights Washington;

Petitioners.

**MEMORANDUM IN SUPPORT OF
PETITION FOR RULEMAKING
PROVIDING FOR AN ASSESSMENT
FOR A REPRESENTATIONAL
ACCOMMODATION IN
ADMINISTRATIVE HEARINGS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I. INTRODUCTION

C.B., the Fred T. Korematsu Center at Seattle University School of Law, and Disability Rights Washington (DRW)¹ petition the Washington State Office of Administrative Hearings (OAH) to promulgate a new rule to ensure that appellants like C.B. with disabilities affecting their ability to self-represent have the reasonable accommodations they need and are entitled to under the Americans with Disabilities Act (ADA) and the Washington Law Against Discrimination (WLAD). Under these laws, OAH is required to 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. If OAH finds that the appellant's disability prevents her from putting on her case, then it is required by law to provide a reasonable accommodation to ensure the appellant has meaningful access to the hearing process. In the context of administrative or judicial hearing procedures, representation is the primary means by which people unable to represent themselves due to their disabilities should be accommodated. Because OAH has neither a system in place to do this evaluation nor trained representatives readily available to appoint if this accommodation is deemed necessary, this rule is required for appellants with disabilities to have a fair chance to put on their case.

Petitioners request that OAH adopt the *Model Agency Rule on Representational Accommodation in Administrative Agency Hearings* developed by the Washington State Access

¹ C.B. is a client of the Seattle University Ronald A. Peterson Law Clinic who has been an appellant in OAH Health Care Authority hearings; the Fred T. Korematsu Center at Seattle University School of Law advances justice and equality through research, advocacy, and education and seeks to combat discrimination, help communities advocate for themselves, and train the next generation of social justice advocates; Disability Rights Washington is a private non-profit organization that protects the rights of people with disabilities statewide and has a mission to advance the dignity, equality, and self-determination of people with disabilities.

1 to Justice Board's Justice Without Barriers Committee.² This Model Rule was included in
2 *Ensuring Equal Access for People with Disabilities, A Guide for Washington Administrative*
3 *Proceedings*, which was endorsed by OAH in the publication. This rule or a substantially similar
4 one will meet the accommodation needs of appellants with disabilities limiting self-
5 representation.

6 C.B.'s own experience with the hearing process shows why this rule is critical. She lives
7 with multiple severe disabilities including anxiety, bi-polar disorder, PTSD, stroke, and a chronic
8 gastrointestinal disorder. She depends on the Washington Health Care Authority (WHCA)
9 COPEs program to provide her with the personal care provider hours she needs to maintain her
10 health, independence, and dignity. When those hours of in-home care were erroneously reduced
11 by WHCA, Ms. B. had to go through the OAH administrative adjudicative process to pursue her
12 meritorious claim. As a result of her disabilities, Ms. B. could not have represented herself in the
13 adjudicative process. Fortunately, she was able to obtain assistance from a legal advocate at
14 Northwest Justice Project (NJP). Without that legal assistance, Ms. B. would have had to forgo
15 her appeal altogether because her disabilities precluded her from self-representation, and any
16 attempt at self-representation would have adversely impacted her health.

17 This memorandum shows why a rule that allows for the provision of a trained
18 representative as a reasonable accommodation for disability in administrative hearings is
19 essential to accommodate appellants like Ms. B., and would also be simple to implement, result

21 ² Ensuring Equal Access for People with Disabilities, A Guide for Washington Administrative Proceedings (May
22 2011) <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/ATJBLC/~media/73292065DB15413D865E7AB3426806F4.ashx>. Appendix A.

1 in little cost and increased efficiency for OAH, and provide for a fair and just administrative
2 hearing system.

3 **II. SUMMARY OF PETITION MEMORANDUM ARGUMENTS**

4 This Petition Memorandum is organized as follows:

5 Part A sets out the relevant background of the Petitioner C.B. and shows how this rule
6 would provide equal access to the administrative hearing process essential for Ms. B. and others
7 like her to maintain benefits necessary for independence, health, and dignity.

8 Part B demonstrates that this rule is legally necessary to ensure meaningful access to the
9 administrative hearing process. The current OAH policy of refusing to assess a disabled person's
10 request for a representational accommodation violates the ADA, the WLAD, and the Due
11 Process Clause of Washington's Constitution. Washington state courts, federal courts and the
12 federal immigration agency have recognized the legal obligation to provide for a representational
13 accommodation in the judicial and administrative courts, and have adopted rules that allow for
14 the assessment and provision of representational accommodations when necessary. This section
15 also demonstrates that, in light of the extensive law supporting the adoption of this rule, it would
16 be arbitrary and an abuse of agency discretion to deny this petition for rulemaking.

17 Part C shows how this rule benefits both appellants with disabilities and the OAH fair
18 hearing system. Along with improved access to administrative hearings, this rule will increase
19 the efficiency of the administrative hearing process and decrease the number of frivolous
20 appeals.

1 Part D addresses potential costs and floodgates concerns that the State may raise
2 regarding the implementation of a rule that provides for representational accommodations, and
3 shows that those concerns are unlikely to occur.

4 III. ARGUMENTS

5 **A. Ms. B. and others like her need a new rule to ensure that people with disabilities have** 6 **equal access to the administrative court when challenging the denial of critical needs** 7 **benefits.**

8 C.B.'s story provides a vivid example of why this new rule is needed. She is a current
9 participant in the Medicaid COPES program, which provides her with a trained paid caregiver in
10 her home, allowing her to live there safely rather than in a restrictive and more expensive
11 institutional placement. Ms. B. depends on these personal care hours to meet her basic needs
12 because she suffers from multiple severe disabilities, some resulting from a disabling stroke in
13 2013. Ms. B.'s disabilities include seizures, bipolar disorder, hypertension, gastrointestinal
14 problems, severe anxiety, and agoraphobia, which greatly impact her ability to function
15 independently.

16 In October 2013, Ms. B.'s Medicaid-covered hours of care were reduced by the WHCA
17 because of a misunderstanding between her and her case manager. Ms. B. and her care provider
18 were told that the only way to reinstate the hours on which she was so dependent was to file an
19 appeal and to make her case in an administrative hearing. She was also told that her son, who
20 was compensated by COPES to provide care, could not represent her in the proceedings because,
21 as her care provider, he was a paid Washington State employee.

1 Self-representation in an administrative trial-like hearing requires an appellant to do a
2 variety of complex tasks: to present facts in the form of exhibits and witnesses in support of the
3 appeal, to examine and cross-examine witnesses and experts, to find and argue law, and to make
4 and respond to objections.³ While these tasks are difficult for any lay person, they are impossible
5 when the appellant has a disability that either impacts her ability to focus on or comprehend the
6 tasks, or deprives her of the stamina necessary to do the tasks.⁴

7 Here, Ms. B. could not accomplish the tasks required to resolve her case because her
8 severe anxiety and agoraphobia worsens under the most mundane of stress inducements. Her
9 anxiety disorder and the impacts of the stroke resulted in her inability to focus or respond in any
10 coherent way to the proceedings at the hearing challenging her care reduction. Even with the
11 assistance of an advocate from NJP, Ms. B.'s health significantly deteriorated after enduring the
12 stress of an administrative hearing. During the hearing, Ms. B. frantically paced the hearing room
13 while listening to testimony. It took her almost a month to regain some semblance of composure
14 and she will never return to the level of stability she had before the hearing process. If not for
15 NJP's representation, Ms. B. would have had no other choice but to abandon all efforts to pursue
16 her appeal challenging the reduction in care hours—solely because her severe disabilities would
17 have prevented her from putting on her case.⁵

18 Ms. B. is not the only appellant who would benefit from a rule providing for an
19 individualized evaluation to determine if a representational accommodation is needed to access
20

21 ³ Lisa Brodoff, *Lifting Burdens: Proof, Social Justice, and Public Assistance Administrative Hearings*, 32 N.Y.U.
Rev. of L. and Soc. Change 131, 149 (2008).

22 ⁴ *Id.*

23 ⁵ Interviews with C.B., her son/caregiver, and her NJP representative; and a review of the OAH hearing file.

1 the administrative hearing system. This rule would give access to people with disabilities severe
2 enough that they would be precluded from performing the tasks needed to put on a case—e.g.,
3 appellants with significant cognitive disabilities, severe anxiety or depression, dementia, or
4 extreme weakness from congestive heart failure.

5 To deny Ms. B. and OAH appellants like her the right even to receive an assessment of
6 their need for this accommodation, and then the provision of a representational accommodation
7 when necessary to access the administrative adjudicative process, is fundamentally unjust and a
8 violation of the law. The following sections show why this new accommodation rule is required
9 by law and why the new rule will result in a more efficient, low cost, and just system of
10 challenging an agency's denial of "brutal needs"⁶ benefits to the citizens of Washington State.

11 **B. This new rule is legally necessary.**

12 *1. Washington courts have long recognized the legal right to representation as a reasonable*
13 *accommodation under the ADA and WLAD.*

14 Each court and administrative tribunal in Washington State must protect persons with
15 disabilities from discrimination in judicial proceedings.⁷ For example, the ADA requires that
16 courts and administrative agencies be physically accessible to litigants who use wheelchairs; they
17 may not require these litigants to crawl up the courthouse steps.⁸ And, when a litigant like
18 Petitioner C.B. with crippling anxiety resulting from a stroke cannot put on a case for her claim
19 for COPES personal care benefits as a result of her disabilities, Washington law recognizes that a

20 ⁶ *Goldberg v. Kelly*, 397 U.S. 254, 261, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970) (describing food, clothing, shelter,
21 income, and health care as "brutal needs" and finding that the constitutional right to procedural due process includes
the right to a fair hearing when access to such resources is denied).

22 ⁷ See 42 U.S.C. § 12131-12134 (Title II of the ADA); RCW 49.60 (WLAD).

23 ⁸ See *Tennessee v. Lane*, 541 U.S. 509, 124 S. Ct. 1978, 158 L. Ed. 820 (2004).

1 lawyer may be required in its judicial branch courts as a reasonable accommodation to access
2 that justice system.⁹ Washington court rules affirm the ADA's requirement that an individualized
3 assessment of the need for accommodation of physical and cognitive disabilities could result in
4 the provision of *both* an elevator/wheelchair lift and a representational accommodation.¹⁰

5 Unfortunately, the Washington State OAH recognizes only the possibility of the former
6 and not the latter accommodation. This disparity in recognition of the full scope of
7 accommodations necessary to effectively access the administrative court highlights the dire need
8 for a new rule. While the state judicial branch courts recognize and evaluate all parties' requests
9 for *representational* accommodations, the OAH refuses to conduct an individualized assessment
10 of this need, and locks many disabled appellants out of the hearing room in the same way as if
11 they lacked mobility and were refused an elevator to access the second floor hearing room.
12 OAH's failure to provide for a representational accommodation both violates the ADA and
13 WLAD and stands in stark contrast to the policies and practices of the Washington judicial
14 branch courts. Further, it conflicts with a growing number of federal courts interpreting the ADA
15 and Rehabilitation Act as requiring a representational accommodation when found as necessary
16 to access administrative and judicial branch courts.¹¹

17
18 ⁹ Gen. R. 33(a)(1)(C): (a) Definitions. The following definitions shall apply under this rule:

19 (1) "Accommodation" means measures to make each court service, program, or activity, when viewed in its entirety,
20 readily accessible to and usable by an applicant who is a qualified person with a disability, and may include but is
21 not limited to: ...

22 (C) *as to otherwise unrepresented parties to the proceedings, representation by counsel, as appropriate or
23 necessary to making each service, program, or activity, when viewed in its entirety, readily accessible to and usable
24 by a qualified person with a disability.* (emphasis added).

¹⁰ See Gen. R. 33.

¹¹ See 42 USC §§12131-12615 (Title II of the ADA); RCW 49.60 (WLAD); Rehabilitation Act of 1973, § 504(a),
29 U.S.C.A. § 794(a) (Rehabilitation Act); Franco-Gonzalez v. Holder, 767 F. Supp.2d 1034 (C.D. Cal. 2010)
(preliminary injunction); 2013 U.S. Dist. LEXIS 186258 (C.D. Cal. 2013) (partial summary judgment)

1 Under the ADA and WLAD, executive branch agencies are required to provide all
2 persons who have qualifying disabilities with reasonable accommodations to access all
3 adjudicative services.¹² The ADA and WLAD apply equally to both administrative agency courts
4 and judicial branch courts because state agencies that hold administrative hearings are, by
5 definition, “public entities” under the ADA.¹³ Washington’s judicial branch courts are required to
6 do a fact-specific and individualized assessment to determine if a person qualifies for a
7 representational accommodation to access the justice system.¹⁴ It is sound logic to apply the same
8 requirement to administrative adjudications.

9 The Washington State Supreme Court recognizes the need for a representational
10 accommodation when a litigant has a disability that prevents him or her from meaningfully
11 accessing the judiciary.¹⁵ In 2007, the Supreme Court adopted, with the Washington State Bar
12 Association and the Access to Justice Board’s approval, GR 33, which codified the fundamental
13 right to present one’s case regardless of the type of disability or the accommodation needed.
14 Washington State’s administrative system has failed to adopt a rule parallel to GR 33. As a
15 result, people with developmental disabilities, traumatic brain injuries, mental illness and other
16 disabilities that prohibit them from meaningfully accessing the hearing process through self-
17 representation are effectively denied due process or are forced to abandon meritorious claims, as
18 was almost the case with Ms. B.

19
20
21 (<http://www.clearinghouse.net/chDocs/public/IM-CA-0067-0009.pdf>).

22 ¹² 28 C.F.R. §§35.102(a).

23 ¹³ 42 U.S.C. § 12131(1).

24 ¹⁴ Gen. R. 33

¹⁵ Id.

MEMORANDUM IN SUPPORT OF
ADOPTING NEW RULE - Page 9 of 26

SEATTLE UNIVERSITY
RONALD A. PETERSON LAW
CLINIC
1215 E. Columbia
Seattle, Washington 98122-4340
Phone: (206) 398-4131
Fax: (206) 398-4136

1 This grave disparity between accessing the judicial branch courts and the administrative
2 hearing system was brought into stark relief in the case of *Weems v. Board of Industrial*
3 *Insurance Appeals*.¹⁶ In 2007, the Board of Industrial Insurance Appeals (BIIA) denied Dale
4 Weems's application to reopen his claim for worker's compensation benefits, due to his
5 worsening injuries caused by a 1973 accident on the job. The BIIA denied the application and
6 Mr. Weems, acting *pro se*, appealed the denial to an agency hearing. Mr. Weems could not find
7 an attorney to represent him, but he told the administrative hearing judge that he was unable to
8 represent himself due to his brain injury.¹⁷ The judge denied Mr. Weems's request for a
9 representational accommodation as well as his request to reopen his worker's compensation
10 benefit claim.¹⁸

11 Mr. Weems sought judicial review of the BIIA's order, and the state superior court found
12 that "Weems currently suffers from a mental health condition that [a]ffects his ability to fully
13 and effectively represent himself and prosecute his [Worker's Compensation] case."¹⁹ The
14 superior court appointed counsel as a reasonable accommodation pursuant to GR 33 and the
15 ADA.²⁰ After counsel's briefing, the superior court reversed the BIIA's administrative hearing
16 decision and remanded for a new hearing.²¹ In the reopened case, Mr. Weems was *again* denied a
17 representational accommodation by the agency.²² The industrial appeals judge entered a decision
18 affirming the BIIA's denial of Mr. Weems' application, and Mr. Weems, again, had to file a

19
20 ¹⁶ *Weems v. Bd. of Ind. Ins. Appeals*, No. 44713-4-II, 2014 WL 3362056 (2014).

¹⁷ *Id.* at *1.

¹⁸ *Id.* at *2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at *3

1 petition for review of the decision in superior court.²³ And, again, pursuant to GR 33, the
2 superior court provided Mr. Weems with counsel as a representational accommodation. Mr.
3 Weems's counsel argued that denial of his representational accommodation at the administrative
4 hearing prevented him from meaningfully accessing the proceeding. However, on
5 reconsideration, the court affirmed the agency decision stating there was no legal basis to order
6 the agency to pay for counsel.²⁴

7 Mr. Weems appealed to the Court of Appeals on the issue of whether the BIIA erred in
8 failing to appoint counsel in the agency hearing as a reasonable accommodation under the ADA
9 and WLAD.²⁵ After briefing and oral argument, the Court of Appeals remanded the case to
10 superior court to make specific findings of fact on Mr. Weems's need for a representational
11 accommodation under the ADA, indicating its agreement that the ADA requires such an
12 individualized evaluation.²⁶ On remand, the superior court found that, under the ADA, the
13 agency had violated its affirmative obligation to conduct a fact-finding inquiry to determine
14 whether Mr. Weems was a person with a disability, and if so, to provide a reasonable
15 accommodation of that disability. The reasonable accommodation required by the facts was
16 appointment of counsel at public expense.²⁷

17 This new rule would put in place a procedure for doing exactly what the *Weems* courts
18 found is required by the ADA. A rule is needed so that hearing appellants are not required to
19 have multiple hearings and appeals in order to access this legally required accommodation.

20 ²³ *Id.* at *4-5.

21 ²⁴ *Id.* at *4.

22 ²⁵ *Id.* at *1.

²⁶ *Id.* at *8.

²⁷ *Id.* at *7.

1 2. *After a favorable court decision, the federal government now recognizes the right to*
2 *representation as a reasonable accommodation in the Immigration administrative courts.*

3 The federal government now recognizes the right to representational accommodations in
4 administrative proceedings.²⁸ In *Franco-Gonzales v. Holder*, the United States District Court
5 held that a class of disabled immigration detainees was entitled to appointment of a “qualified
6 representative” under Section 504 of the Rehabilitation Act.²⁹ The court found that, without this
7 representational accommodation, disabled detainees could not meaningfully participate in the
8 immigration court administrative hearing proceedings,³⁰ including the right to examine the
9 evidence against the immigrant, to present evidence on the immigrant’s own behalf, and to cross-
10 examine witnesses presented by the government.³¹ In this case, the detainees’ abilities to exercise
11 their rights was hindered by their cognitive disabilities; thus, providing representation was the
12 only means by which they could invoke their rights.³² Both the federal district court and now
13 Immigration and Customs Enforcement have agreed section 504 of the Rehabilitation Act, the
14 law on which the ADA is modeled, requires federal agencies to assess and provide for a
15 representational accommodation. Following the landmark decision in *Franco-Gonzales*,

16
17
18 ²⁸*Franco-Gonzalez v. Holder*, 767 F. Supp.2d 1034 (C.D. Cal. 2010) (preliminary injunction); 2013 U.S. Dist.
19 LEXIS 186258 (C.D. Cal. 2013) (partial summary judgment)
(<http://www.clearinghouse.net/chDocs/public/IM-CA-0067-0009.pdf>).

20 ²⁹ *Id.*

21 ³⁰ The federal Immigration Court at issue in the *Franco-Gonzales* class action is an administrative agency court that
22 is part of the Department of Justice's Executive Office for Immigration Review (EOIR). EOIR primarily decides
23 whether foreign-born individuals charged by the Department of Homeland Security with violating immigration law
24 should be ordered removed from the United States. The agency employs approximately 235 immigration judges
25 nationwide who conduct these important administrative court proceedings.

26 ³¹ *Franco-Gonzales*, 767 F. Supp. 2d at 1034.

27 ³² *Id.*

1 Immigration Law Administrative Judges now must assess detainees with disabilities and appoint
2 counsel when necessary for the detainee to access the system.³³

3 Title II of the ADA seeks to enforce the constitutional right of due process by requiring,
4 when necessary, accommodations of disabilities in judicial proceedings.³⁴ Whether an
5 unrepresented claimant can confront and present evidence undoubtedly depends on his ability to
6 read, reason, comprehend, communicate, and regulate emotions. When there is evidence
7 suggesting a lack of ability to perform these basic functions, an ALJ must inquire into a party's
8 capacity for self-representation. Only by engaging in such an inquiry and removing the
9 structurally imposed obstacles to a litigant's full participation may a judge be assured that he/she
10 will be able to fairly and accurately resolve the legal claims.³⁵

11 In summary, the adoption of GR 33 in Washington, the *Weems* litigation, and the *Franco-*
12 *Gonzales* decision suggest that OAH must do an individualized determination of a disabled
13 person's need for accommodation to access both the agency and judicial branch courts, and if a
14 representational accommodation is found to be appropriate, require the provision of a suitable
15 representative. This new rule creating that process is required by law.

16 /

17 /

20
21 ³³See, Dep't of Justice, *Nationwide Policy to Provide Enhanced Procedural Protections to Unrepresented Detained*
Aliens with Serious Mental Disorders or Conditions (Apr. 22, 2013)
<http://nwirp.org/Documents/ImpactLitigation/EOIRDirective04-22-2013.pdf>.

22 ³⁴*Tennessee v. Lane*, 541 U.S. 509, 532, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004).

23 ³⁵See, e.g., *In Re Meade*, 103 Wn.2d 374, 381, 693 P.2d 713 (1985).

1 3. *Because this new rule is legally required, a denial of this Petition for Rulemaking could*
2 *be found to be arbitrary and capricious by a reviewing court.*

3 A decision by OAH not to proceed with this rulemaking petition would be subject to
4 judicial review.³⁶ An agency decision not to adopt a rule may be overturned when the agency had
5 a statutory duty to adopt the rule or if its decision not to act was arbitrary and capricious.³⁷ Under
6 the judicial review provisions of the Administrative Procedure Act, relief will be granted to
7 “persons aggrieved by the performance of an agency action, including the exercise of discretion”
8 when the court determines that the agency action is “(i) Unconstitutional; (ii) Outside the
9 statutory authority of the agency or the authority conferred by a provision of law; (iii) Arbitrary
10 or capricious...”³⁸ Agency action is arbitrary and capricious

11 if the agency has relied on factors which Congress has not intended
12 it to consider, entirely failed to consider an important aspect of the
13 problem, offered an explanation for its decision that runs counter
14 to the evidence before the agency, or is so implausible that it could
15 not be ascribed to a difference in view or the product of agency
16 expertise.³⁹

17 Because the possibility of a representational accommodation is required by both the ADA and
18 WLAD to allow people with disabilities equal access to the agency hearing system, and without
19 this new rule OAH still has no process in place to review requests for this legally mandated
20 accommodation, a reviewing court is likely to find OAH’s refusal to promulgate this rule to be

21 ³⁶ RCW 34.05.570(4)(b) (“A person whose rights are violated by an agency's failure to perform a duty that is
22 required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order
23 pursuant to this subsection requiring performance”).

24 ³⁷ *Rios*, 145 Wn.2d at 493, 505; *accord Northwest Ecosystem Alliance v. Wash. Forest Practices Bd.*, 149 Wn.2d
67, 66 P.3d 614 (2003).

³⁸ RCW 34.05.570(4)(c).

³⁹ *Motor Veh. Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L. Ed.
2d 443 (1983).

1 “implausible” given its mandatory statutory duty. In two analogous cases, reviewing courts have
2 come to just that conclusion.

3 The Washington Supreme Court ordered a state agency to initiate rulemaking when
4 supported by the most current research.⁴⁰ In *Rios v. Washington Department of Labor and*
5 *Industries*, the agency was held to have acted arbitrarily when it denied a petition for rulemaking
6 brought by pesticide handlers in 1997.⁴¹ The agency denied the petition for rulemaking to
7 establish a cholinesterase monitoring program for pesticide handlers,⁴² despite the fact the
8 agency’s own report on the issue had a heading that termed cholinesterase monitoring “the most
9 well developed and feasible method among available worker monitoring approaches for
10 cholinesterase-inhibitor exposure.”⁴³ The court held that, in light of this “most current research,”
11 the agency denial was “willful and unreasoning and taken without regard to the attending facts or
12 circumstances.”⁴⁴

13 Similarly, *Tummino v. Hamburg* supports the proposition that a failure to grant this
14 petition would be arbitrary and capricious.⁴⁵ The Federal District Court for the Eastern District of
15 New York reviewed an FDA denial of a citizens’ petition requesting that the contraceptive, Plan
16 B, be made available to all women and girls without an age restriction. The FDA denied the
17 petition despite overwhelming support from the medical community, including its own medical
18 review team, that there was no health related basis for the age restriction on access to Plan B.

19
20 ⁴⁰ RCW 34.05.574(1) (“In a review under RCW 34.05.570, the court may . . . (b) order an agency to take action
required by law”).

21 ⁴¹ *Rios v. Wash. Dep’t of Labor & Indus.*, 145 Wn.2d 483, 507, 39 P.3d 961 (2002).

22 ⁴² *Id.* at 487.

23 ⁴³ *Id.*

24 ⁴⁴ *Id.* citing *Hillis v. Dep’t of Ecology*, 131 Wash.2d 373, 383, 932 P.2d 139 (1997).

⁴⁵ *Tummino v. Hamburg*, 936 F. Supp. 162 (E.D. N.Y. 2013).

1 The federal court concluded that “the agency's decision cannot withstand any degree of scrutiny .
2 . . because of its disregard for the scientific evidence that the FDA had before it.”⁴⁶

3 The *Tummino* and *Rios* decisions suggest that a denial of this petition will be found to be
4 arbitrary and capricious by a reviewing court. Here, OAH has a clear statutory duty to comply
5 with the ADA and WLAD by individually evaluating and acting on reasonable accommodation
6 requests. A continuing failure to act on this duty by denying this rulemaking petition is arbitrary
7 and capricious because the agency would still lack any method to evaluate the ability of a
8 disabled appellant to represent him or herself, and still fail to provide a representational
9 accommodation when a disability precludes an appellant from self-representation in an
10 administrative hearing. That decision would be “willful and unreasoning” and “disregard(ing) of
11 ...evidence before it” given the clarity of the legal duty to individually assess appellants’ needs
12 for accommodation and the availability of this same reasonable accommodation in the
13 Washington state judicial branch courts.

14 **C. This rule benefits both appellants with disabilities and the OAH fair hearing system.**

15 *1. Other courts’ implementation of a representational accommodation shows that this rule*
16 *is easy to administer and will increase the efficiency of the administrative hearing*
process.

17 Under the ADA, an agency must grant a request for a reasonable accommodation unless
18 it is “unreasonable” and unnecessary. A requested accommodation is only unreasonable if it
19 poses an undue financial or administrative burden or fundamentally alters the nature of the
20

21
22 ⁴⁶ *Id.* at 26; see also Linda Greenhouse, *Of Judges and Judging*, N.Y. Times Opinionator (Apr. 17, 2013),
<http://opinionator.blogs.nytimes.com/2013/04/17/of-judges-and-judging/?ref=opinion>.

1 program or services provided.⁴⁷ The experiences of Washington State Courts with the GR 33
2 representational accommodation and the federal immigration agency courts with the
3 implementation of the *Franco-Gonzales* order demonstrate that providing counsel to those in
4 need is not an undue burden and in fact provides for greater efficiencies in the hearing system.

5 a. *Washington State courts' administration of GR 33*

6 In Washington, judicial branch courts have managed to implement GR 33 without undue
7 difficulty or expense in the nine years since its adoption. Pierce County Superior Court's GR 33
8 accommodation requirements process is illustrative of the state trial court's experience of
9 implementing a representational accommodation.⁴⁸ If a request for an ADA accommodation for
10 appointment of counsel is made by a party to a civil proceeding, the ADA coordinator there uses
11 the following simple test to determine if the person qualifies for a representational
12 accommodation:

- 13 1) Psychological or neurological impairments, documented
14 by a qualified expert, which interfere with the applicant's
15 ability to comprehend the proceedings and/or
communicate with the court; and
- 16 2) The cognitive interference is to a degree that the applicant
17 is functioning at a level that is substantially below that of
an average *pro se* litigant⁴⁹

18 Thurston County provides a simple form to request any ADA accommodation, including
19 representational accommodation.⁵⁰ The Supreme Court has created a set of forms for the state

20 _____
21 ⁴⁷ 28 CFR § 35.150(a)(3); RCW 49.60.

22 ⁴⁸ Americans with Disabilities Act Information. Pierce County Superior Court procedure forms available at
<https://www.co.pierce.wa.us/index.aspx?nid=1027>

23 ⁴⁹ Attached as Appendix B.

1 courts to use when evaluating and deciding on requests for reasonable accommodations.⁵¹ Over
2 the past nine years, state courts at all levels have administered GR 33 without significant
3 administrative barriers.

4 *b. Washington State Access to Justice Board's Model Rule*

5 In May of 2011, the Washington State Access to Justice Board's Justice Without Barriers
6 Committee published *Ensuring Equal Access for People with Disabilities, A Guide for*
7 *Washington Administrative Proceedings*.⁵² This comprehensive manual for administrative
8 agency courts describes in detail the best practices for evaluating the need for a representational
9 accommodation. It also provides a model rule for initiating, facilitating, and deciding on
10 whether a representational accommodation is necessary. Petitioner is requesting that this Model
11 Rule be adopted by OAH here.

12 *c. Implementation of representational accommodation assessments in*
13 *immigration courts.*

14 The federal administrative agency Immigration Court system has also implemented a
15 straight-forward policy to assess the need for counsel as an accommodation.⁵³ An Immigration
16

17 ⁵⁰GR 33 REQUESTS FOR ACCOMMODATION UNDER THE ADA

18 (b) **Process for Requesting Accommodation.**

19 (1) Requests for accommodation under GR 33 shall be presented to either the Superior Court Administrator or the
Assistant Superior Court Administrator, provided, that a need for accommodation that arises less than 48 hours
before a scheduled hearing, may be presented to the judicial officer scheduled to hear the proceeding. Thurston
County Superior Court, Local Rules 2015 (Sept. 1, 2015)

20 <http://www.co.thurston.wa.us/superior/Local%20Court%20Rules/Thurston%20Co%20LCR%202015.pdf>.

21 ⁵¹ Washington Courts, Court Forms: General Rule 33 Request for Reasonable Accommodation,
22 <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=71> (last visited Jun. 2, 2016).

23 ⁵² Ensuring Equal Access for People with Disabilities, A Guide for Washington Administrative Proceedings (May
2011) [http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-
Board/ATJBLC/~media/73292065DB15413D865E7AB3426806F4.ashx](http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/ATJBLC/~media/73292065DB15413D865E7AB3426806F4.ashx). Appendix A.

24 ⁵³ Dep't of Justice, *supra* note 33.

1 Administrative Law Judge (IALJ) is required to initiate a hearing “when it comes to [the
2 judge’s] attention through documentation, medical records, or other evidence that an
3 unrepresented detained alien appearing before [him/her] may have a serious mental disorder or
4 condition that may render him or her incompetent” to self-represent.⁵⁴ The following guidance
5 has been provided to IALJs in determining one’s ability to self-represent: (1) assessing the
6 individual’s right to present, examine, and object to evidence and cross-examine witnesses; (2)
7 the individual’s ability to file an appeal; (3) the individual’s ability to make decisions about
8 asserting and waiving rights; (4) the individual’s ability to respond to allegations and charges in
9 the proceeding, present information, and respond to questions relevant to the eligibility for
10 relief.⁵⁵

11 An individualized assessment of the need for counsel is not difficult and is not an undue
12 burden on administrative agencies. Ascertaining whether assistance of counsel is appropriate for
13 an appellant with a brain injury should be no more cumbersome than ascertaining whether an
14 American Sign Language interpreter is appropriate for a party who is deaf or a personal reader
15 is appropriate for a claimant with a visual impairment. The OAH should follow the lead of state
16 courts and the federal immigration agency in assessing the need for a representational
17 accommodation in state agency proceedings.

18 /

19 /

20
21 ⁵⁴ *Id.* It should be noted that Petitioners do not agree that the ADA requires only a “serious mental disorder” in order
to provide a representational accommodation. The agency is required to assess all types of disabilities to determine
need for a particular accommodation.

22 ⁵⁵ Phase I of Plan to Provide Enhanced Procedural Protections to Unrepresented Detained Respondents with Mental
Disorders, <https://dl.dropboxusercontent.com/u/27924754/EOIR%20Protections.pdf> (last visited Jun. 2, 2016).

1
2 2. *Representational accommodations would also improve the efficiency and fairness of the*
3 *administrative hearing process.*

4 The benefits of representational accommodation flow not only to the disabled appellant
5 but also to the administrative hearing courts, which would become more efficient and fair in their
6 adjudication processes. A disabled appellant gains through a representational accommodation an
7 advocate who can “delineate the issues, present the factual contentions in an orderly manner,
8 conduct cross-examination, and generally safeguard the interests of the recipient,” which the
9 disabled appellant would not be able to perform herself.⁵⁶ Such functions do not hamper the
10 hearing process.⁵⁷ To the contrary, given the complexity of the administrative hearing process, it
11 is likely that the hearing progresses more quickly, efficiently, and *fairly* when a party who is
12 physically or mentally unable to present a case has a trained representative there to accommodate
13 that need.⁵⁸ Indeed, fairness is the supporting pillar upon which American jurisprudence is built.⁵⁹

14 In fact, providing representational accommodation to those in need significantly benefits
15 the justice system. In 2010, the ABA Coalition for Justice surveyed judges on the impact of the
16 rising number of *pro se* litigants on representation in the courts. An overwhelming 86 percent of
17 the respondents felt that courts would be more efficient if the parties were represented.⁶⁰ The

18
19 ⁵⁶ *Goldberg*, 397 U.S. at 271.

⁵⁷ *Id* (noting the benefits of retaining counsel in regards to VA hearings).

⁵⁸ Lisa Brodoff et al., *The ADA: One Avenue to Appointed Counsel Before a Full Civil Gideon*, 2 *Seattle U. L. Rev.*,
20 621 (2004).

⁵⁹ *Gideon v. Wainwright*, 372 U.S. 335, 344, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963) (noting that “from the very
21 beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive
safeguards designed to assure fair trials before impartial tribunals).

⁶⁰ ABA Coalition for Justice, *Report on the Survey of Judges on the Impact of the Economic Downturn on*
22 *Representation in the Courts* (Preliminary) (July 12, 2010)

1 survey's results are illustrative of just some of the burdens that *pro se* litigants with disabilities
2 present for the courts:

3 ·56% of the judges thought that the court is negatively impacted when there is not
4 a fair representation of the facts.

5 ·42% of judges were concerned that, when aiding a *pro se* litigant, they
6 compromised the impartiality of the court in order to prevent injustice.

7 ·62% said that parties are negatively impacted when not represented.

8 ·78% said the court is negatively impacted.

9 ·71% of judges who thought the court is negatively impacted were concerned by
10 the time staff spent assisting self-represented parties.⁶¹

11 These court concerns are exponentially greater when the *pro se* party has a disability that
12 prevents self-representation.

13 Moreover, studies suggest that access to representation may lead to more accurate
14 adjudications.⁶² Fairness is established before proceedings even begin, as studies also show that
15 there are fewer lost claims filed in jurisdictions with representational accommodations.⁶³ All of
16 these benefits create improved efficiency and decrease cost while at the same time providing
17 appellants with disabilities impacting self-representation meaningful access to the adjudicative
18 process.

19
20 [http://www.americanbar.org/content/dam/aba/migrated/JusticeCenter/PublicDocuments/CoalitionforJusticeSurveyR
eport.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/JusticeCenter/PublicDocuments/CoalitionforJusticeSurveyReport.authcheckdam.pdf).

21 ⁶¹ *Id.*

22 ⁶² Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. FOR SOC. JUST. 51
(2010).

23 ⁶³ *Id.*

24 MEMORANDUM IN SUPPORT OF
ADOPTING NEW RULE - Page 21 of 26

SEATTLE UNIVERSITY
RONALD A. PETERSON LAW
CLINIC
1215 E. Columbia
Seattle, Washington 98122-4340
Phone: (206) 398-4131
Fax: (206) 398-4136

1 **D. The potential costs and “floodgates” concerns that state agencies using the OAH**
2 **hearing process may raise in opposition to the implementation of a representational**
3 **accommodation rule are unlikely to occur.**

4 This proposed rule will not open the floodgates for requests for representation from
5 disabled appellants in the administrative hearing process. The state courts’ experience with GR
6 33 is instructive. For example, since the implementation of GR 33 in 2008, the highly populous
7 Pierce County approved only an average of 14.75 representational accommodations in superior
8 court per year.⁶⁴ Given that Pierce County Superior Court reported 15,743 civil case filings in
9 2012 (second in number only to King County),⁶⁵ an average of 15 counsel accommodations from
10 that high caseload suggests that the number of representational accommodations granted and
11 concomitant costs would likely be very low at OAH. And, while cost should not be dispositive of
12 whether a person is entitled to a reasonable accommodation under law, the costs associated with
13 providing representational accommodations will likely be small. Looking again at Pierce
14 County’s GR 33 data, the average cost for providing representational accommodations to eligible
15 parties was only \$25,767 per year.⁶⁶

16 According to information from OAH, there had only been *six requests* for
17 representational accommodations from appellants over the two year period that data was
18 collected from 2013 - 2014.⁶⁷ In 2015, OAH implemented a new software system and reports that
19 there has only been one request for a representational accommodation since the system was

20 ⁶⁴ Attached Appendix C.

21 ⁶⁵ Washington Courts, Pierce County Civil Caseload Report 2012,
<http://www.courts.wa.gov/caseload/?fa=caseload.showReport&level=s&freq=a&tab=civil&fileID=civfilyr> (last
22 visited Jun. 2, 2016).

23 ⁶⁶ See attached Appendix C.

24 ⁶⁷ Information collected and presented orally at a meeting with appellant advocates in August 2015 from Assistant
Deputy Chief Administrative Law Judge for the Washington OAH, Hon. Jane Habegger.

1 implemented.⁶⁸ While the number of requests may increase once a new rule is in place and more
2 appellants are aware of it, the experience of the Pierce County superior court with GR 33
3 suggests that the number of requests made to agencies will be manageable.

4 Some agency officials have expressed concerns that any appellant with a developmental
5 disability would automatically qualify for representation in agency hearings at the State's
6 expense. While the high cost of reasonable accommodations alone do not legally allow an
7 agency to deny the accommodation,⁶⁹ statistics from OAH regarding the number of DDA
8 hearings show that this concern is unfounded.⁷⁰ First, a representational accommodation would
9 only be appropriate for appellants with developmental disabilities who have been assessed as
10 needing one and who have no other preferred person to represent them. Second, the number of
11 DDA hearings has decreased dramatically in the past few years. Since 2011, OAH has held a
12 high of 81 DDA hearings and a low of 20 per year. So far in 2016, only two DDA hearings have
13 been held.⁷¹ Given the critical importance of developmental disability benefits to those with
14 cognitive impairments, it is essential that those relatively few people in need of representation
15 receive this accommodation if their cases go to hearing.

16 Furthermore, this rule might have less financial impact than GR 33 because there is no
17 requirement for advocates to hold a bar license in the administrative adjudicative process.⁷²

18 Representation could be contracted out and performed by a trained paralegal or advocate. Legal
19

20 ⁶⁸ Information provided upon request from Chief ALJ Lorraine Lee on April 7, 2016.

21 ⁶⁹ 42 U.S.C.A. § 12132

22 ⁷⁰ Attached Appendix D showing the number of Developmental Disabilities hearing requests and hearings held from
2007 through April 2016.

23 ⁷¹ *Id.*

24 ⁷² RCW 34.05.428

1 aid organizations such as NJP or Columbia Legal Services already have advocates at the ready,
2 including paralegals, who are trained in administrative law and could perform the duties of
3 representation for relatively low cost under a contract with OAH.

4 Some administrative costs are inherent to the proper administration of justice, and that
5 cost is not a valid justification for denying the right to accommodation under the ADA and
6 WLAD to litigants with disabilities preventing self-representation. "While integration of people
7 with disabilities will sometimes involve substantial short-term burdens, both financial and
8 administrative, the long-range effects of integration will benefit society as a whole." H.Rep.
9 485(III), 101st Cong., 2d Sess. 50 (1990) U.S. Code Cong. & Admin. News 1990, 473.

10

11 III. CONCLUSION

12 A representational accommodation for people with disabilities like Ms. B. is already
13 being implemented by courts in Washington State and in federal immigration administrative
14 courts nationally. Processes are in place to conduct individualized assessments that do not
15 impose an undue burden. The benefits of providing representation in adjudicative hearings to
16 both the appellants and to the administrative courts are numerous. Petitioner asks OAH to grant
17 this rulemaking petition and promulgate the Model Rule providing for an assessment for a
18 representational accommodation when an appellant's disability prevents self-representation and

19 /
20 /
21 /

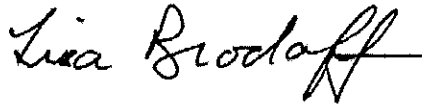
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

precludes him or her from accessing the administrative hearing system.

RESPECTFULLY SUBMITTED in the State of Washington.

DATED this ____ day of June, 2016.

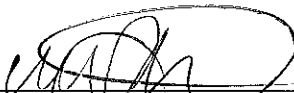
RONALD A. PETERSON LAW CLINIC
Attorney for Petitioner



Lisa Brodoff, WSBA No. 11454



Erik Benzekry, Legal Intern



Whitney Hill, Legal Intern


1
2 **DECLARATION OF SERVICE**

3 LISA BRODOFF DECLARES: I caused to be served this document, **Petition and**
4 **Memorandum in Support of Petition for Rulemaking**, upon the following parties:

5 BARB CLEVELAND 6 RULES COORDINATOR 7 OFFICE OF ADMINISTRATIVE HEARINGS 8 P.O. BOX 42488 OLYMPIA, WA 98504-2488 PHONE (360)407-2711 FAX (360)664-8721	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Overnight Mail (via FedEx) <input type="checkbox"/> Facsimile Transmission <input type="checkbox"/> ECF Filing/E-Mail Transmission
--	--

9 I declare under the laws of the State of Washington that the foregoing is true and
10 correct to the best of my knowledge.

11 DATED this 23 rd day of June 2016, at Seattle, King County, Washington.

12
13 

14
15 _____
16 LISA BRODOFF
17 Attorney for Petitioners

Appendix A

Model Agency Rule

Model Agency Rule on Representational Accommodation in Administrative Agency Hearings

The Authority of an Adjudicative Proceedings Presiding Over

In cases where the party requests the appointment of a suitable representative, and in cases where the PRESIDING OFFICER has a reasonable basis to believe that, because of a physical and/or mental disability/impairment, a party is unable to understand the administrative proceedings or meaningfully participate in the proceeding, the PRESIDING OFFICER must conduct an inquiry into the party's ability to understand and participate before proceeding to the merits of the case.

1. (a) If the PRESIDING OFFICER determines that the party does not have a physical and/or mental impairment making he/she unable to meaningfully participate in the proceedings, the PRESIDING OFFICER may then proceed with a hearing on the merits. Where the PRESIDING OFFICER denies the request of a party to appoint a suitable representative, the PRESIDING OFFICER shall inform the party that she/he may appeal the decision.
2. (b) If the PRESIDING OFFICER determines that the party does have a physical and/or mental impairment making him/ her unable to meaningfully participate in the proceedings, the PRESIDING OFFICER shall:
 1. Seek the consent of the party to appoint a suitable representative to represent the interests of the party in the hearing on the merits as an accommodation of the party's disability;
 2. If consent is given, appoint a suitable representative for the party at agency expense and at no cost to the party;
 3. If consent is refused, proceed with the hearing on the merits.
3. (c) If, due to a physical/mental impairment, the party is unable to give or refuse consent to the appointment of a suitable representative, the PRESIDING OFFICER shall appoint an administrative hearing facilitator to assist the party in making an informed decision whether to consent or refuse to consent to the appointment of a suitable representative. Where the party is unable to make an informed decision despite the assistance of the administrative hearing facilitator, the PRESIDING OFFICER has the discretionary authority to require the agency to seek appointment in a court of competent jurisdiction of a Guardian ad litem as

the appropriate representative, however, the PRESIDING OFFICER may determine that someone other than a GAL would be a suitable representative.

4. "Suitable representative" is denied as an attorney, or other legal representative qualified to practice before the agency who is specially trained in the substance and procedure of that agency's hearings.

(d) "Administrative hearing facilitator" is denied as an individual with experience and demonstrated competency in supporting effective communication with individuals with disabilities, appointed by PRESIDING OFFICERS for the purpose of assisting parties who cannot consent or refuse the appointment of a suitable representative due to limitations on capacity resulting from a physical or mental impairment.

(e) The PRESIDING OFFICER shall initiate the inquiry at whatever stage of the proceedings he or she becomes aware of facts that support a reasonable belief that the party is unable to understand and meaningfully participate in the proceedings.

(f) The record of the proceedings of the inquiry, and any supplementary documents generated in the course of the inquiry, shall be confidential, and shall be held as separate record apart from the hearing record.

(g) Following appointment, the suitable representative shall serve until the administrative case is concluded, or the party no longer consents to representation.

(h) All PRESIDING OFFICERS shall receive training on the implementation of this rule, which shall include information on the following:

1. common disability-related limitations on communication, listening, hearing, auditory processing, reasoning, and other attributes crucial to effective participation in a hearing;
2. stereotypes and misconception related to disability;
3. accommodation for disability-related limitations and removal of barriers in administrative proceedings.

Appendix B

Pierce County Superior Court

Assessment Qualifications Statement (For determining ADA Accommodation Requests for Attorneys)

When a request for appointment of an attorney at court expense is made by a person with a disability, the following criteria will be used as a guideline during the assessment process in determining whether the requestor qualifies for the appointment of an attorney under GR-33:

The person with a disability is a party to the proceeding and the following factors exist:

Severe Cognitive or Neurological impairments, documented by a qualified expert diagnosis, which significantly interferes with the applicant's ability to comprehend the proceedings and/or communicate with the court.

AND

The comprehension and/or communication interference is to a degree of seriousness to where the applicant is functioning at a level that is substantially below that of an average pro se litigant.

Appendix C

PIERCE COUNTY SUPERIOR COURT - REPORT OF GR-33 ADA ATTORNEY CASES AND COSTS BY YEAR

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016
Costs	\$11,960.81	\$28,035.43	\$22,047.73	\$35,992.28	\$32,883.65	\$32,138.82	\$21,449.76	\$21,625.84	\$3,948.65

GRAND TOTAL SPENT THROUGH 03-22-16: \$211,512.73

Date of this Report is 03-23-16 (Compiled by Bruce S. Moran, Deputy Court Administrator and ADA Coordinator)

NOTE: GR-33 was adopted by the Washington State Supreme Court effective 09-01-07, although Pierce County Superior Court had no attorney appointments or expenses in 2007.

Appendix D

Developmentally Disabled Cases- 2007- April 2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Totals
Hearing Request	1254	1238	1642	1597	1229	466	492	688	445	106	9157
Legal Representation	301	277	404	397	292	113	119	286	321	90	2600
Hearings Held	91	80	116	97	65	38	20	68	81	2	658
Appealed to BOA	17	21	31	23	18	9	N/A	N/A	N/A	N/A	128
Judicial Review	7	5	7	5	7	1	N/A	N/A	N/A	N/A	34

NOTE: Our new case management system is no longer accessed or used by the Board of Appeals (BOA) as of 2015. We are unable to query the data for cases that were appealed to BOA or for cases that went to Superior Court for 2013 - 2016. *Also, all results are based on the year the appeal was filed.