

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

OFFICE OF ADMINISTRATIVE HEARINGS

(agency name)

Administrative Order No. 4

(1) I, David R. LaRose, director of the Office of Administrative Hearings

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

- WAC 10-04-020 - Change of agency organization and office locations
WAC 10-08-040 - Uniform procedural rule on notice of hearing, adding notice of right to interpreter
WAC 10-08-150 - New section on interpreters
WAC 10-08-160(2) - Amending interpreter oath

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. 85-20-053 filed with the code reviser on Sept. 26, 1985. These rules shall take effect: [X] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

- [X] (a) This rule is promulgated pursuant to RCW 42.17.250, 34.04.020 [WAC 10-04-020]; and is intended to administratively implement that statute. WAC 10-08-040, WAC 10-08-150 and WAC 10-08-160(2)
[] (b) This rule is promulgated pursuant to RCW which directs that the

(agency)

has authority to implement the provisions of

(name of act or RCW citation)

- [] (c) This rule is promulgated under the general rule-making authority of the

(agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED October 31, 1985

STATE OF WASHINGTON FILED

By [Signature]

OCT 31 1985

Chief Administrative Law Judge Title

CODE REVISER'S OFFICE WSR 85-22-032



STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS

4224 6th Ave. SE, PY 15 • Lacey, Washington 98504 • (206) 459-6353 • (SCAN) 585-6353

RULE PURPOSE STATEMENT

Title, purpose, summary, statutes implemented:

WAC 10-04-020, Function--Organization--Offices, is amended to update agency organization and field office locations as required by RCW 42.17.250.

WAC 10-08-040, Notice of Hearing, is amended to include notice of a party's right to appointment of an interpreter pursuant to RCW 2.42.030.

WAC 10-08-150, Language Interpreters, is a new section to implement the provisions of RCW 2.42, as amended, providing procedures for appointment of interpreters, mode of interpretation, and explaining an impaired party's rights.

WAC 10-08-160(2), Testimony Under Oath or Affirmation, is amended to conform with RCW 2.42.050, as amended.

Statutory authority for adopting rules:

RCW 34.12.010, RCW 34.12.080

Responsible agency person:

David R. LaRose, Chief Administrative Law Judge  
Office of Administrative Hearings  
4224 6th Avenue SE, Lacey, Washington 98504-8915 - PY-15  
206 459-6353 (SCAN) 585-6353

Agency comments or recommendations regarding statutory language, implementation, enforcement, fiscal matters:

RCW 2.42.040(2) requires an impaired party or witness to bear the cost of the person's interpreter unless the person is indigent. Ch. 389, Sec. 12, Laws of 1985 removes the indigency requirement for the hearing impaired. These amendments to WAC 10-08 remove the indigency requirement for non-English-speaking parties and witnesses in order that all impaired persons will be treated equally in administrative hearings. The fiscal impact over and above that created by RCW 2.42 (as amended) will be the cost of providing interpreters for nonindigent, non-English-speaking parties and witnesses in administrative hearings. Because a majority of non-English-speaking parties and witnesses appear at hearings involving claims for benefits, it is quite likely they would meet indigency tests in any event.

These rules are not necessary to comply with a federal law or a federal or state court decision.

These rules will have no economic impact on the small business community.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-04-020 FUNCTION--ORGANIZATION--OFFICES. The office of administrative hearings was created by chapter 34.12 RCW for the impartial administration of administrative hearings for state agencies. The office is under the direction of the chief administrative law judge and is organized in two divisions (~~(, the-benefits-division-and-the-regulatory-and-special-assignments-division)~~).

Administrative law judges assigned to the two divisions preside over hearings in contested cases and issue proposals for decisions, including findings of fact and conclusions of law. (~~(The-benefits-division-is-responsible-for-hearings-held-before-the-employment-security-department-and-the-department-of-social-and-health-services,--The-regulatory-and-special-assignments-division)~~) Division one is responsible for hearings held before the department of social and health services, the utilities and transportation commission, the liquor control board, the department of licensing, and any other state agency as defined in RCW 3((2))4.12.020(4). Division two is responsible for hearings held before the employment security department.

The administrative office is located at Building No. 1, 4224 - 6th Avenue S.E., Lacey, Washington, 98504-8915. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday except legal holidays. Administrative law judges are housed in the following field offices:

Social & Health Subdivision  
~~((1117-Jefferson))~~ 1212 Jefferson SE, Suite 200  
Olympia WA 98504-7821

Social & Health Subdivision  
1414 Dexter Avenue North  
Seattle WA 98109

Social & Health Subdivision  
~~((428-Hutton-Building))~~ 2nd Floor, ES Building  
~~((South-9-Washington))~~ South 130 Arthur  
Spokane WA 9920((4))2

Social & Health Subdivision  
2925 Rockefeller  
Everett WA 98201

Yakima Subdivision  
1110 West Lincoln Avenue  
Yakima WA 98902

Utilities & Transportation Subdivision  
~~((6th-Floor-Highways-Licenses-Building))~~ 1212 Jefferson SE, Suite 200  
Olympia WA 98504-7821

Liquor Control Subdivision  
~~((1025-East-Union))~~ 1212 Jefferson SE, Suite 200  
Olympia WA 98504-7821

Employment Security Subdivision  
Room 606 Securities Building  
1904 Third Avenue  
Seattle WA 98101

Employment Security Subdivision  
Capital 5000 Building  
Olympia WA 98504-5822

Employment Security Subdivision  
2nd Floor, ES Building  
P.O. Box TAF-C-14  
Spokane WA 99220

All written communications by parties pertaining to a particular case shall be filed with the field office, if any, assigned to the case, and otherwise with the deputy chief administrative law judge at the administrative office.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-08-040 NOTICE OF HEARING. (1) In any contested case all parties shall be served with a notice within the time required by statute governing the respective agency or proceeding, and in the absence of a statutory requirement, not less than twenty days before the date set for the hearing. The notice shall include the information specified in RCW 34.04.090(1) and if the hearing is to be conducted by teleconference call the notice shall so state. The notice shall state that if a limited English-speaking or hearing impaired party or witness needs an interpreter a qualified interpreter will be appointed and that there will be no cost to the party or witness. The notice shall include a form for a party to indicate whether he or she needs an interpreter and to identify the primary language or hearing impaired status of the party. The notice shall also include such other information as may be necessary to apprise the parties of the scope and purpose of the hearing.

(2) Defects in the notice may not be waived (~~if all parties agree~~) unless:

(a) The presiding officer determines that the waiver has been made knowingly, voluntarily and intelligently;

(b) The party's representative, if any, consents; and

(c) If a party is an impaired person, the waiver is requested through the use of a qualified interpreter.

(3) When a limited-English-speaking person is a party in an administrative proceeding all notices concerning the hearing, including hearing notices, notices of continuance, and notices of dismissal, shall either be in the primary language of the party or shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and responding to, if necessary, the notice.

NEW SECTION

WAC 10-08-150. INTERPRETERS. (1) An "impaired person" is any person involved in a contested case hearing who is a hearing impaired person or a limited-English-speaking person.

(2) A "hearing impaired person" is a person who, because of a hearing impairment or speech defects, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, or hard of hearing.

(3) A "limited-English-speaking person" is a person who because of a non-English-speaking cultural background cannot readily speak or understand the English language.

(4) A "qualified" interpreter is one who is readily able to interpret spoken and translate written English to and for impaired persons and to interpret or translate statements of impaired persons into spoken English and who meets the requirements of WAC 10-08-150(9); Provided that for hearing impaired persons a qualified interpreter must be certified by the registry of interpreters for the deaf with a specialist certificate-legal, master's comprehensive skills certificate or comprehensive skills certificate

(5) An "intermediary interpreter" is a hearing impaired interpreter who is certified by the registry of interpreters for the deaf with a reverse skills certificate, who meets the requirements of WAC 10-08-150(9), and who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter for the hearing impaired.

(6) When an impaired person is a party to any contested case hearing or witness therein, the presiding officer shall, in the absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceedings. The right to a qualified interpreter may not be waived except when:

(a) The impaired person requests a waiver through the use of a qualified interpreter;

(b) The representative, if any, of the impaired person consents; and

(c) The presiding officer determines that the waiver has been made knowingly, voluntarily, and intelligently.

(7) Waiver of a qualified interpreter shall not preclude the impaired person from claiming his or her right to a qualified interpreter at a later time during the proceeding.

(8) Relatives of any participant in a proceeding and employees of the agency involved in a proceeding shall not be appointed as interpreters in the proceeding. This subsection shall not prohibit the office of administrative hearings from hiring an employee whose sole function is to interpret at administrative hearings.

(9) The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired person. This determination shall be based upon the testimony or stated needs of the impaired person, the interpreter's education, certifications, and experience in interpreting for contested cases, the interpreter's understanding of the basic vocabulary and procedure

involved in the proceeding, and the interpreter's impartiality. The parties or their representatives may question the interpreter as to his or her qualifications and impartiality.

(10) If at any time during the proceeding, in the opinion of the impaired person, the presiding officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired person, the presiding officer shall appoint another qualified interpreter.

(11) If the communication mode or language of a hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the presiding officer who shall appoint and pay an intermediary interpreter to assist the qualified interpreter.

(12) Mode of interpretation.

(a) Interpreters for limited-English-speaking persons shall use simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(b) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation, unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the qualified interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(c) When an impaired person is a party to a proceeding, the interpreter shall translate all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding as a non-impaired party listening to uninterpreted statements would have.

(13) A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(14) The presiding officer shall explain to the impaired party that a written decision or order will be issued in English, and that the party may contact the interpreter for a translation of the decision at no cost to the party. If the party has a right to review of the order or decision, the presiding officer shall orally inform him or her during the hearing of the right and of the time limits to request review.

(15) At the hearing the interpreter for a limited English-speaking party shall provide to the presiding officer the interpreter's telephone number written in the primary language of the impaired party. A copy of such telephone number shall be attached to the decision or order mailed to the impaired party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.

(16) In any proceeding involving a hearing impaired person, the presiding officer may, with the consent of the agency involved in the hearing, order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use as the official transcript of the proceeding. Where simultaneous translation is used for interpreting statements of limited-English-speaking persons, the foreign language statements shall be recorded simultaneously with the English language statements by means of a separate tape recorder.

(17) A qualified interpreter appointed under this section is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The agency involved in the hearing shall pay such interpreter fee and expenses. The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services.

AMENDATORY SECTION (Amending Order 3, filed 11/11/82)

WAC 10-08-160 TESTIMONY UNDER OATH OR AFFIRMATION. (1)  
Every person called as a witness in a hearing shall swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060.

~~((2)--Interpreters shall swear or affirm that they will well and truly translate all questions asked of and answers given by the witness requiring interpretation--))~~

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.