2-27-2014

Brief of Amicus Curiae Fred T Korematsu Center for Law and Equity

Lisa Brodoff

Fred T. Korematsu Center for Law and Equality

NO. 44713-4-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

DALE WEEMS,

Appellant

v.

STATE BOARD OF INDUSTRIAL APPEALS,

Respondent.

BRIEF OF AMICUS CURIAE FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

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I. IDENTITY AND INTEREST OF AMICUS

The Fred T. Korematsu Center for Law and Equality's (Korematsu Center) identity and interest as *amicus* is described in its Motion for Leave to File Amicus Brief.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

The Korematsu Center urges this Court to reverse the trial court's order denying Mr. Weems his legal right, under the Americans with Disabilities Act (ADA) and the Washington Law Against Discrimination (WLAD), to the reasonable accommodation of representation before the Washington State Board of Industrial Insurance Appeals (BIIA). Mr. Weems' significant mental health disabilities prevented him from representing himself in his appeal of his denial of Workers Compensation benefits. Under both the ADA and WLAD, the BIIA is required to do an individualized and fact-specific evaluation of the impacts of Mr. Weems' disability on his ability to represent himself, and, if it finds that his disabilities prevent his equal access to the administrative justice system, to provide counsel as a reasonable accommodation.

Amicus curiae urges that this Court reverse the trial court's order and offers the following arguments and information in order to assist the Court in resolving the issues raised in this appeal:

1. The BIIA's refusal even to assess Mr. Weems' need for his requested representational accommodation violates the ADA and the WLAD, and runs counter to the expressed affirmation of this right by Washington State's Supreme Court and its largest administrative agency holding hearings for other state agencies, the Office of Administrative Hearings (OAH). Courts and agencies outside of Washington State have similarly affirmed the right of a requesting party with a disability to an individualized determination of the need for a representational accommodation, whether or not the court is located in the executive or judicial branch.

2. Relatively simple and straight forward systems have already been created by courts and agencies to do this required individualized assessment of the need for a representational accommodation, so that any claim by the BIIA that doing so is an undue burden is discredited.

3. After a properly done assessment of the need for a representational accommodation is completed, relatively few parties will likely be in need of this accommodation, and yet the provision of a suitable representative to those who are eligible results in great benefits to the agency adjudication system of justice.

III. STATEMENT OF THE CASE

Amicus adopts Appellant Weems' statement of the case.

IV. ARGUMENT

A. Courts and administrative agencies have recognized and affirmed that the ADA and WLAD require the provision of a representational accommodation when an individualized assessment demonstrates that a party with a disability cannot otherwise access the court system.

When a litigant who requires a wheelchair for mobility is forced to crawl up the courthouse stairs to access the court system, courts and administrative agencies recognize that the ADA may require that it provide an elevator or wheelchair lift as a reasonable accommodation for the person to get his day in court. *Tennessee v. Lane*, 541 U.S. 509 (2004). When a litigant with cognitive disabilities resulting from a brain injury cannot put on a case for his claim for Workers Compensation as a result of his disabilities, Washington state courts recognize that the ADA may require that it provide a lawyer or qualified representative in its judicial branch courts as a reasonable accommodation to access that justice system. GR 33.

In this case, the Washington state judicial branch courts and its Supreme Court have affirmed the ADA's requirement that an individualized assessment of the need for accommodation of physical and

cognitive disabilities could result in the provision of both an elevator/wheelchair lift *and* a representational accommodation. Unfortunately, the Washington State BIIA only recognizes the possibility of the former and not the latter representational accommodation. This disparity in recognition of the accommodation needs of all types of people and disabilities before this administrative court is at the heart of the issue presented here. While the state judicial branch court recognized and honored Mr. Weems' request for a representational accommodation, the BIIA, with the exact same person having the very same barriers to presenting his case, refused to apply the ADA, refused to do an individualized assessment of his need for accommodation, and locked Mr. Weems as much out of the hearing room as if he lacked mobility and was refused an elevator to access a second floor hearing room. This incongruity in the BIIA's application of the ADA and WLAD violates those laws and stands in stark contrast to the clear interpretation of state and federal disability law by the Washington judicial branch courts, Washington's largest administrative hearing agency – the Office of Administrative Hearings, and a growing number of federal and state courts interpreting the ADA and Rehabilitation Act as requiring a representational accommodation when found as necessary to access administrative and judicial branch courts. *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).

1. Washington State judicial branch courts have affirmed the availability of the representational accommodation and implemented it throughout the state court system.

Unlike the BIIA, the Washington State Supreme Court has recognized and affirmed that the ADA and WLAD require a *representational* accommodation when a litigant has a disability that prevents him/her from self-representation. GR 33 is "intended to facilitate access to the justice system by persons with disabilities at all levels of court systems in the State of Washington."[1] It specifically references the federal ADA and WLAD, and *Tennessee v. Lane*, 541 U.S. 509 (2004), as mandating equal access: "The suggested rule will help to ensure that persons with disabilities have equal and meaningful access to the judicial system in Washington and guide courts in discharging this obligation *as required by law*." *Id.* (emphasis added).

The State Supreme Court recognized that the ADA requires public entities to undertake a fact-specific investigation to determine what

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[1] Wash. Cts., Proposed Rules Archives, GR 33 - Requests for Accommodation by Persons with Disabilities, *available at* http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplayArchive&ruleId=92.

constitutes a reasonable accommodation. GR 33 (c)(1)(C); *See* 42 U.S.C. § 12132. It further recognized that some litigants with cognitive disabilities that prevent them from self-representation will need legal counsel to access court services. GR 33 defines accommodation as: "measures to make each court service, program, or activity, when viewed in its entirety, *readily accessible to and usable by a person with a disability,* and may include... *representation by counsel....*" GR 33 (a)(1)(C) (emphasis added).

The ADA and WLAD apply equally to both administrative agency courts and Washington State judicial branch courts. State agencies that hold administrative hearings are, by definition, "public entities" under the ADA. 42 U.S.C § 12131(1). Like state courts, executive branch agency adjudications are required to include qualified individuals with disabilities in the provision of all services. *Id.*; *see* 28 C.F.R §§35.102(a) - .104 If Washington State's judicial branch courts are required under the ADA to do a fact-specific and individualized assessment to determine if a representational accommodation is needed to access the justice system, so too must the BIIA agency courts. This court should look to GR 33's purpose in providing for a representational accommodation as a required accommodation as support for a holding that the ADA and WLAD impose the same analysis on the BIIA's administrative adjudicative proceedings.

2. *Washington State's largest administrative hearing agency, the Office of Administrative Hearings, has taken steps to implement a representational accommodation for appellants who need it to access the adjudication process.*

Following in the footsteps of the Washington State Supreme Court in its promulgation of GR 33, the Washington State OAH recently gave the public notice that it intends to promulgate a new rule in WAC Chapter 10-08 setting up a process for individually assessing the need for *representation* as an accommodation in its administrative hearings. Wash. St. Reg. 14-05-038, filed on February 12, 2014. In its statement of reasons why the new rule may be needed, OAH specified, "The rule is intended to address the barriers which some people with physical and/or mental impairments face, which may cause them to be unable to meaningfully participate in an administrative hearing." *Id.* According to its CR-101, OAH is modeling its proposed rule after the model rule contained in "*Ensuring Equal Access for People with Disabilities: A Guide for Washington Administrative Hearings.*"[2] *Id.* That Model Rule creates a process for evaluating an appellant's request for appointment of a

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[2] *Ensuring Equal Access for People with Disabilities: A Guide for Washington Administrative Hearings* is available at http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/ATJBLC/~/media/73292065DB15413D865E7AB3426806F4.ashx. See p. 39, Model Agency Rule for text of proposed OAH rule.

"suitable representative."[3] It requires that agencies provide a representational accommodation when 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 adjudicative proceedings or meaningfully participate in the proceedings."[4] A "suitable representative" is defined as "an attorney, or other legal representative qualified to practice before the agency who is specifically trained in the substance and procedure of that agency's hearings."[5]

OAH had over 66,000 administrative hearing requests filed in Fiscal Year 2012 in cases involving 26 Washington State agencies.[6] BIIA had approximately 14,000 appeals filed during the same time frame.[7] Ninety eight percent of the OAH appeals involve appellants contesting denials of vital public assistance benefits from the Department of Social and Health Services, medical assistance coverage from the Health Care Authority, and

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[3] *Ensuring Equal Access for People with Disabilities: A Guide for Washington Administrative Hearings* at 39.

[4] *Id.*

[5] The Model Agency Rule on Representational Accommodation in Administrative Agency Hearings, *Id* at pp. 39-40.

[6] http://www.oah.wa.gov/AboutOAH.shtml#Sources.

[7] BIIA Total Appeals Filed and Granted, *available at* http://www.biia.wa.gov/documents/InternetGraphs.pdf.

unemployment benefits from the Employment Security Department.[8] Like BIIA hearings, these proceedings involve access to critically important health care and income benefits that impact the health and well-being of Washington State families. The hearings themselves can involve complex law and procedure, and the development of a fact-specific record. *See, e.g.,* WAC Chapt. 10-08 Model Rules of Procedure. Unlike the BIIA, OAH has recognized with this rulemaking that some appellants have disabilities that directly limit their ability to put on evidence, understand the law and procedure, and mount a case on their own. With four times the case filings of BIIA, OAH is meeting its legal obligation under the ADA and WLAD to assess and provide a suitable representative as a reasonable accommodation to parties that appear before it.

3. Courts in other jurisdictions have recognized that the ADA representational accommodation is required in both the judicial and executive branch courts.

Recognition of the ADA's legal mandate that a representational accommodation may be required for some disabled litigants to access the courts and administrative agencies has moved beyond Washington State. Most notably, the federal district court in *Franco-Gonzales v. Holder,* 828 F. Supp.2d 1133 (C.E. Cal. 2011) held that a class of disabled

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[8]OAH Efficiency Review Study Highlights p. 2. *available at* http://www.oah.wa.gov/OAH%20Efficiency%20Review%20Highlights.pdf.

immigration detainees in Washington State, California, and Oregon were entitled to appointment of a "qualified representative" under Section 504 of the federal Rehabilitation Act. Preceding passage of the ADA, the Rehabilitation Act requires federal agencies and courts to provide equal access to services for people with disabilities. 29 U.S.C. §§701-7961. Federal District Court Judge Dolly M. Gee made her order effective immediately because, without this representational accommodation, disabled detainees could not:

> meaningfully participate in the immigration court process, including the rights to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government. Plaintiffs' ability to exercise these rights is hindered by their mental incompetency, and the provision of competent representation able to navigate the proceedings is the only means by which they may invoke those rights. [9]

Like the BIIA, the federal Immigration Court at issue in the *Franco-Gonzales* class action is an administrative agency court that is part of the Department of Justice's Executive Office for Immigration Review (EOIR). EOIR primarily decides whether foreign-born individuals charged by the Department of Homeland Security with violating immigration law should

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[9]See, *Franco-Gonzales Order Re Plaintiffs' Motion For Partial Summary Judgment And Plaintiffs' Motion For Preliminary Injunction On Behalf Of Seven Class Members*, pp. 9-10, CV 10-02211 (C.D. Cal. 2013), Available at http://nwirp.org/Documents/PressReleases/DistrictCourtOrderonFrancov.Holder04-23-2013.pdf.

be ordered removed from the United States. The agency employs approximately 235 immigration judges nationwide who conduct these important administrative court proceedings. Both the federal district court and now the agency that conducts immigration hearings across the United States[10] have agreed that section 504 of the Rehabilitation Act, the law on which the ADA is modeled, requires federal agencies to assess and provide a representational accommodation.

Other courts have applied the ADA analysis to determine whether or not a representational accommodation is appropriate under the particular facts presented, some finding counsel is warranted and others not. *See, e.g., Taylor v. Team Broadcast*, 2007 WL 1201640 (D.D.C. 2007) (unpublished);[11] *Johnson v. City of Port Arthur*, 892 F.Supp. 835 (E.D. Texas 1995);[12] *Pacheco v. Bedford*, 787 A.2d 1210 (R.I. 2002).[13] [14] Like

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[10] See, *Nationwide Policy to Provide Enhanced Procedural Protections to Unrepresented Detained Aliens with Serious Mental Disorders or Conditions, available at* http://nwirp.org/Documents/ImpactLitigation/EOIRDirective04-22-2013.pdf.

[11]Plaintiff argued that defendant company violated ADA by firing him when he had sleep apnea and requested counsel; court finds: "Plaintiff's medical condition, which is at the heart of this case, and which the defendant argues prevents him from performing the essential functions of his job duties, would also prevent him from representing himself adequately ... Plaintiff's case is sufficiently complex, in that it deals with medical testimony and will involve interviewing and questioning of doctors, to warrant court-appointed counsel."

[12] Employee brought ADA claim against employer, and sought appointment of counsel under ADA; court states "Case law regarding the ADA...is sparse. However, other courts utilize the same analysis for appointment of counsel requests in ADA cases as in Title VII cases. ...Therefore, in exercising its discretion, the district court should consider the

these and the *Franco-Gonzales* decision, this court should hold that the ADA requires that the BIIA do an individualized determination of Mr. Weems' need for representation to access both the agency and judicial branch courts, and if so found, require the provision of a suitable representative.

B. Simple systems have been created by courts and agencies to do individualized assessments of the need for a representational accommodation.

An agency must grant a request for accommodation unless it is "unreasonable" and unnecessary. A requested accommodation is *only* unreasonable if it poses an *undue* financial or administrative burden or fundamentally alters the nature of the program or services provided. 28 CFR § 35.150(a)(3); RCW 49.60. The experiences of Washington State courts with the GR 33 representational accommodation and of the federal immigration agency courts with the implementation of the *Franco-*

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following relevant factors: 1) Whether the complainant has the financial ability to retain counsel; 2) Whether the complainant has made a diligent effort to retain counsel; and 3) Whether the complainant has a meritorious claim"; court finds litigant did not have likelihood of success on the merits.

[13] Court applies factors articulated in *Johnson v. City of Port Arthur*, then finds that Bedford did not seek outside representation and appeared to be capable of litigating on its own.

[14] *Amicus* notes that neither the ADA nor its regulations require that a litigant seeking a representational accommodation first attempt to find outside representation, and asserts that these courts' Title VII analysis is misplaced.

Gonzales order demonstrate that providing counsel to those in need is not an undue burden and is, in fact, relatively simple to do.

Here in Washington State, judicial branch courts have managed to implement GR 33 without undue difficulty or expense over the last six years since its adoption. Pierce County Superior Court's GR 33 accommodation process is illustrative of the state trial courts' experience with implementing a representational accommodation. If a request for an ADA accommodation for appointment of an attorney is made by a party to a civil proceeding, the ADA coordinator uses the following factors to determine if the person qualifies:

- Psychological or neurological impairments, that are documented by a qualified expert diagnosis, which significantly interfere with the applicant's ability to comprehend the proceedings and/or communicate with the court; and
- The cognitive interference is to a degree that the applicant is functioning at a level that is substantially below that of an average pro se litigant. [15]

Using the GR 33 process, over the last six years Pierce County Superior Court has approved a total of 46 ADA representational accommodation requests. That averages around eight people per year

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[15] *Pierce County Superior Court Assessment Qualifications Statement* (for determining ADA Accommodation Requests for Attorneys), obtained from Deputy Court Administrator Bruce S. Moran and attached as Appendix A. Pierce County Superior Court GR-33 procedure and forms available at http://www.co.pierce.wa.us/index.aspx?nid=1027.

receiving counsel accommodations.[16] Given that Pierce County Superior Court reported 15,743 civil case filings in 2012 (second in number only to King County),[17] an average of eight counsel accommodations from that high caseload shows the that the number of representational accommodations granted and concomitant costs[18] will likely be very low at BIIA.

In the federal administrative agency Immigration Court system, a new policy to assess the need for counsel as an accommodation was put into nationwide effect immediately after Judge Gee's decision on April 22, 2013. See, *Nationwide Policy to Provide Enhanced Procedural Protections to Unrepresented Detained Aliens with Serious Mental Disorders or Conditions*, available at http://nwirp.org/Documents/ImpactLitigation/EOIRDirective04-22-2013.pdf. A hearing is now required to be initiated by the Immigration Administrative Law Judge

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[16] *Pierce County Superior Court Report of GR-33/ADA Attorney Cases and Costs by Year*, Attached as Appendix B.

[17] Pierce County Civil Caseload Report 2012 is available at: http://www.courts.wa.gov/caseload/?fa=caseload.showReport&level=s&freq=a&tab=civil&fileID=civfilyr.

[18] Over the course of seven years of providing the GR 33 representational accommodation to qualified parties (2008-2013), Pierce County spent a total of $163,058. That averages $24,294 per year. *Pierce County Superior Court Report of GR-33/ADA Attorney Cases and Costs by Year*, Attached as Appendix B.

"when it comes to your attention through documentation, medical records, or other evidence that an unrepresented detained alien appearing before you may have a serious mental disorder or condition that may render him or her incompetent to represent him-or herself..." *Id.*

Since the initial Nationwide Policy statement was made last year, the EOIR adopted more detailed instructions on how to assess the need for counsel as an accommodation. See, *Phase I of Plan to Provide Enhanced Procedural Protections to Unrepresented Detained Respondents with Mental Disorders*, available at https://dl.dropboxusercontent.com/u/27924754/EOIR%20Protections.pdf. It provided the following guidance to IALJs in determining ability to represent oneself:

> A respondent is competent to represent him- or herself in a removal or custody redetermination proceeding if he or she has a:
>
> 1. rational and factual understanding of:
>   a. the nature and object of the proceeding;
>   b. the privilege of representation, including but not limited to, the ability to consult with a representative if one is present;
>   c. the right to present, examine, and object to evidence;
>   d. the right to cross-examine witnesses; and
>   e. the right to appeal.
> 2. reasonable ability to:
>   a. make decisions about asserting and waiving rights;
>   b. respond to the allegations and charges in the proceeding; and
>   c. present information and respond to questions relevant to eligibility for relief.

> A respondent is incompetent to represent him- or herself in a removal or custody redetermination proceeding if he or she is unable because of a mental disorder to perform any of the functions listed in the definition of competence to represent oneself. *Id* at p. 2.

The Phase I Plan goes on to provide examples of indicia of mental disorders that can impair ability for self-representation and sample questions for judges to elicit the information needed to make a decision on the need for a representational accommodation. *Id.* at p. 4 and Appendix A.

Finally, in May of 2011 the Washington State Access to Justice Board's Justice Without Barriers Committee published *Ensuring Equal Access for People with Disabilities, A Guide for Washington Administrative Proceedings.* This comprehensive manual for agency courts describes in detail best practices for evaluating the need for a representational accommodation.[19]

As has been demonstrated by the state courts applying GR 33, the federal immigration court in its EOIR Phase I Plan, and in the Access to Justice Board's *Guide for Washington's Administrative Proceedings*, doing an individualized assessment of the need for counsel is not difficult

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[19] *Guide* pp. 8 - 9, 12, and Appendix F (Capacity for Self-Representation Questionnaire, Best Practices for Determining the Need for Representation as an Accommodation), available at http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/ATJBLC/~/media/73292065DB15413D865E7AB3426806F4.ashx.

and is not an undue burden on these courts. Ascertaining whether assistance of counsel is appropriate for an appellant with a brain disorder should be no more cumbersome than ascertaining whether an American Sign Language interpreter is appropriate for a claimant with a hearing impairment or a personal reader is appropriate for a claimant with a visual impairment. The BIIA should be required by this court to follow the lead of the state courts and federal immigration agency in assessing the need for a representational accommodation in Workers Compensation proceedings.

C. When correctly assessed, relatively few will need a representational accommodation while the benefits to the courts and parties are great.

As the Pierce County Superior Court GR 33 experience has shown, the costs of providing counsel for people with qualifying disabilities to access the courts is relatively small because the number of people needing this accommodation after assessment are few. *See* Appendix A and note 18 *infra*. In fact, the number of times that the BIIA will have to consider appointment of counsel requests is likely to be insignificant. According to BIIA's Strategic Plan of 2009-11, ninety percent (90%) of appellants who appear before it are already represented by counsel.[20] Of the remaining ten

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[20] BIIA Strategic Plan 2009 11, p. 1-5, available at http://www.ofm.wa.gov/budget/manage/strategic/0709/190strategicplan.pdf.

percent (10%), not all will have cognitive disabilities necessitating modifications of BIIA's existing procedures. And, not every appellant with a mental disability will seek or need a representational accommodation; for example, some may only need the accommodation of extra time to read documents or prepare cross examination, or the scheduling of their hearings to coincide with medication management.

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

On the other hand, there are significant benefits to both the parties and the justice system of providing a representational accommodation to those in need. In 2010, the ABA Coalition for Justice surveyed judges on the impact of the rising number of *pro se* litigants on representation in the courts. An overwhelming 86% of the respondents felt that courts would be

more efficient if the parties were represented.[21] The survey's results are illustrative of just some of the burdens that people with disabilities who are *pro se* litigants present for the courts:

> ·56% of the judges thought that the court is negatively impacted when there is not a fair representation of the facts.
> ·42% of judges were concerned that, when aiding a pro se litigant, they compromised the impartiality of the court in order to prevent injustice.
> ·62% said that parties are negatively impacted when not represented.
> ·78% said the court is negatively impacted.
> ·71% of judges who thought the court is negatively impacted were concerned by the time staff spent assisting self-represented parties. *Id.*

Finally, the potential costs of the failure to provide counsel in appropriate cases are aptly illustrated by what has happened in this case. This court should consider the costs of not reasonably accommodating Mr. Weems' disabilities, including the increased administrative costs and judicial inefficiencies (e.g., lengthy delays in completing the administrative proceedings, multiple hearings and remands for supplemental proceedings involving medical evaluations and additional

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[21] ABA Coalition for Justice, Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts (Preliminary), July 12, 2010 *available at* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCcQFjAA&url=http%3A%2F%2Fwww.americanbar.org%2Fcontent%2Fdam%2Faba%2Fmigrated%2FJusticeCenter%2FPublicDocuments%2FCoalitionforJusticeSurveyReport.pdf&ei=nHcJU6evEMTzoASrl4CYCQ&usg=AFQjCNHdBMLjNv_hFbzgJJUtRUWXBREIow&sig2=SzerYhySbJkZBCNCm2JSlA&bvm=bv.61725948,d.cGU

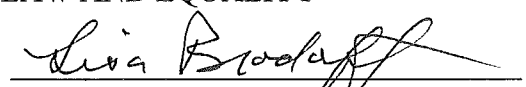
witnesses, increased demands on administrative staff). The assistance of an attorney here may have even obviated the need for any hearing at all.

V. CONCLUSION

A representational accommodation for people with disabilities like Mr. Weems is already being implemented by administrative agencies and courts in Washington State and nationally. Processes are in place to do individualized assessments that do not impose an undue burden. The benefits to the courts and litigants in providing access to justice are numerous. This Court should reverse the trial court and order the BIIA to conduct an individualized assessment and, if warranted, appoint counsel as a reasonable accommodation of Mr. Weems' disability.

RESPECTFULLY SUBMITTED this 27th day of February, 2014.

FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY



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APPENDIX A in Brief of Amicus Curiae Fred T. Korematsu Center for Law and Equality:

Pierce County Superior Court Assessment Qualifications Statement

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:

Psychological or Neurological impairments, that are documented by a qualified expert diagnosis, which significantly interfere with the applicant's ability to comprehend the proceedings and/or communicate with the court.

AND

The cognitive interference is to a degree that the applicant is functioning at a level that is substantially below that of an average pro se litigant.

APPENDIX B in Brief of Amicus Curiae Fred T. Korematsu Center for Law and Equality:

Pierce County Superior Court Report of GR-33/ADA Attorney Cases and Costs by Year

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

Case Name	Opened	Closed	2008 Costs	2009 Costs	2010 Costs	2011 Costs	2012 Costs	2013 Costs
Allison	08-12-11	08-06-12				$773.50	$1,215.50	
Anger	11-05-12	Active					$907.50	$876.82
Anthony	10-29-09	08-31-10		$871.25	$2,443.75			
Bergman	05-19-09	06-17-09		$816.00				
	04-07-11	05-25-11				$952.00		
Blaker	06-03-11	01-27-12				$2,405.50		
Bonilla	04-26-12	Active					$6,878.80	
Burrell	08-27-12	12-11-12					$1,793.50	
Carter	01-26-12	04-26-12						
	05-29-12	12-11-12					$2,391.30	
Cloutier	02-02-10	02-23-10			$2,103.75			
Cornyn	06-20-08	05-29-09	$7,845.81	$7,458.64				
Cox	04-05-13	Active						$5,171.76
Daniel	08-03-10	05-23-12			$935.01	$3,998.00	$929.65	
	11-25-13	Active						$299.34
Davis	03-13-09	03-18-09		0				
Dixon D.	02-13-12	10-25-13					$7,752.80	$11,273.50
Dixon S.	07-01-13	Active						$5,053.44
Dixon V.	03-12-12	04-08-12					$3,176.65	
Flannery	09-29-10	04-05-11			$1,111.93	$6,699.10		
Fredenburg	07-21-08	12-01-09	$2,155.00	$4,176.45			$21.25	
Fuller	04-25-11	08-19-11				$784.00		
Gorrecht	05-12-08	06-04-08	$ 800.00					
Graham	08-10-12	09-05-12					$645.25	
Hansen	09-19-11	12-20-11				$2,702.00		
Hayter	10-08-13	Active						$211.08
Hill	11-09-12	Active					0	$1,370.93
Holbrook	10-24-11	01-27-12				$637.50	$684.25	
Jensen	04-16-13	Active						$1,270.49
Johnson	03-05-10	04-20-10			$1,168.75			
	12-21-10	01-24-11				$187.00		
	12-05-12	02-15-13					$170.00	0
Johnston	08-12-10	12-17-10			$2,985.75			
Kowalewska	07-09-12	Active					$576.25	
Leech	08-15-08	09-05-08	$ 360.00					
Loy	01-30-09	03-06-09		$170.00				
Mauer	12-24-13	Active						$420.75
McIntyre	04-05-10	05-14-10			$2,440.00			
	09-15-11	05-07-12				$994.00		
Milligan	09-19-13	Active						$936.86
Moore	12-08-10	07-01-12			$85.00	$311.67		
Nyman	11-28-11	01-25-12				$584.00	$629.95	
Pearl	11-12-13	Active						$1,156.00
Peterson	09-16-10	06-22-12			$1,488.00	$1,648.00		
Powers	06-11-10	06-21-12			$1,461.50	$212.50		
Rawson	10-11-11	11-14-11				$1,518.50		
Reavis	10-02-12	04-17-13					$1,534.25	$1,511.10
Scott	01-30-09	02-26-09		$483.99				
Sells	12-28-10	06-22-12				$345.67		
Sewell	01-05-09	03-17-09		$4,675.00				
	07-15-09	01-18-10		$2,252.50				
	08-30-10	01-24-11			$1,564.00	$510.00		
	11-19-12	01-28-13					$1,007.25	$1,062.50
Sheldon	09-12-08	02-06-09		$3,150.00				
Sierra	02-02-12	04-20-12					$2,569.50	
	10-14-13	Active						$178.50
Traeger	05-21-08	06-22-12	$800.00	$1,016.00				
Travess	08-28-09	01-15-10		$2,965.60	$448.00			
Ward	04-21-10	10-03-11			$3,812.29	$7,321.84		
Whitney	04-13-11	09-19-11				$3,407.50		
	09-09-13	Active						$357.00

Woolridge	09-17-13	11-14-13						$749.00
Case Name	Opened	Closed	2008 Costs	2009 Costs	2010 Costs	2011 Costs	2012 Costs	2013 Costs
Yarborough	07-25-13	Active						$239.75
TOTALS ----------			$11,960.81	$28,035.43	$22,047.73	$35,992.28	$32,883.65	$32,138.82

GRAND TOTAL SPENT THROUGH 12-31-13: $163,058.58

Date of this Report is 01-10-14 (Compiled by Bruce S. Moran, Deputy Court Administrator)

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.