

OFFICE OF PUBLIC HEARINGS
25 Sigourney Street – 7th Floor, Hartford, CT 06106
phone: 860-418-8770 fax: 860-418-8780
email: officeofpublichearings@ct.gov

July 2, 2014

OPH WBR No. 2014-262 - Elizabeth Church, Complainant v. UCONN Health Center, Respondent

**Ruling on Petition for Intervention and Motion to Modify
Hearing Conference Summary and Order**

A whistle-blower retaliation (“WBR”) case is a contested case proceeding governed by the Connecticut Uniform Administrative Procedures Act, section 4-166, et seq. (“UAPA”), section 4-61dd, and Regulations of Connecticut State Agencies (“Regulations”) sections 4-61dd-1 to 4-61dd-21. A contested case is “a proceeding ... in which the legal rights, duties or privileges of a party are required by state statute or regulation to be determined by an agency after an opportunity for hearing or in which a hearing is in fact held” Section 4-166(2).

Under the UAPA, the definition of agency includes an “officer authorized by law ... to determine contested cases” Section 4-166(1). A Human Rights Referee (“Referee”) appointed by the governor pursuant to section 46a-57 is such an officer. WBR complaints are filed pursuant to section 4-61dd with the Chief Human Rights Referee and assigned to a Referee to convene a public hearing and make a determination. Such complaints are not filed with the Commission on Human Rights and Opportunities (“Commission”).

A “party” in a WBR case is defined as “each person (A) whose legal rights, duties or privileges are required by statute to be determined by an agency proceeding and who is named or admitted as a party, (B) who is required by law to be a party in an agency proceeding or (C) who is granted status as a party under subsection (a) of section 4-177a.” Section 4-166(8) and Regulation 4-61dd-1(11).

Section 4-177a states that:

(a) The presiding officer shall grant a person status as a party in a contested case if that officer finds that: (1) Such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner's legal rights, duties or privileges shall be specifically affected by the agency's decision in the contested case.

(b) The presiding officer may grant any person status as an intervenor in a contested case if that officer finds that: (1) Such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings.

(c) The five-day requirement in subsections (a) and (b) of this section may be waived at any time before or after commencement of the hearing by the presiding officer on a showing of good cause.

(d) If a petition is granted pursuant to subsection (b) of this section, the presiding officer may limit the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the petition and shall define the intervenor's rights to inspect and copy records, physical evidence, papers and documents, to introduce evidence, and to argue and cross-examine on those issues. The presiding officer may further restrict the participation of an intervenor in the proceedings, including the rights to inspect and copy records, to introduce evidence and to cross-examine, so as to promote the orderly conduct of the proceedings.

On June 18, 2014, Commission Counsel Michelle Dumas Keuler filed an appearance to represent the Commission in this case -- citing section 46a-55(b) -- and a "Motion to Modify Hearing Conference Summary and Order" with the Office of Public Hearings ("OPH"). Section 46a-55(b) states, "[t]he executive director, through the supervising attorney, may assign a commission legal counsel to represent the commission in any hearing or appeal under subdivision (3) of subsection (b) of section 4-61dd." The Commission's executive director was granted this authority pursuant to section 2 of Public Act 11-237.

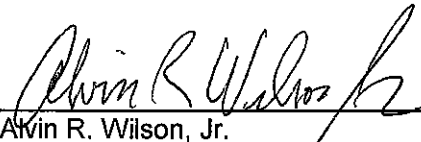
Regulation 4-61dd-11(a) states that, "parties may appear pro se or through an attorney or other duly authorized representative, as provided by law." Regulation 4-61dd-11(b) states that an attorney may appear by filing an appearance containing, inter alia, the name of the party or parties which the attorney is representing. The regulation does not require an attorney filing an appearance to specify which subdivision of section 4-166(8) her or his client relies upon to qualify as a party.

For an entity to be properly before this tribunal, the law requires that it either qualifies as a party pursuant to section 4-166(8), or has been granted intervenor status by the presiding Referee, pursuant to section 4-177a (and Regulation 4-61dd-10). In light of the representation by Commission Counsel that the Respondent consents to the motion to modify the hearing conference summary and order, the undersigned deems the appearance filed with OPH to satisfy the legal requirement set forth in section 4-177a.

Having received no objection from the Respondent, pursuant to Regulation 4-61dd-10, both the Commission's petition and its motion are granted.

So ordered.

Dated this 2nd day of July 2014.


Alvin R. Wilson, Jr.
Presiding Human Rights Referee

Elizabeth Church – via email only
Stephen J. Courtney, Esq. – via email only
Michelle Dumas Kueler, Esq. – via email only

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