

ALJ Redux: Déjà Vu All Over Again?

(continued)

Advocates for the original law in 2006 wanted to create a hearing process that did not require attorneys, and the statute included language that would allow “contractors” to represent associations in these hearings. However, the statute was and remains in direct conflict with the rules of the Arizona Supreme Court regarding the unauthorized practice of law. The DFBS made clear while the first law was being applied that it would require compliance with the Supreme Court’s rules and that it would not allow just any officer or manager to represent an association in these hearings. In most cases, an association will have to be represented by an attorney.

The only exception is if an association has a full-time employee who is not receiving compensation for the representation; the association has authorized the employee to represent it; and the representation is not the primary duty of the employee. See Rule 31(c)(11), Arizona Supreme Court. Aside from the violation of the Supreme Court’s rule on practicing law, if an association tries to represent itself contrary to the Supreme Court’s rule, the DFBS or administrative law judge may reject any written answer and may not allow the association to present evidence or argument at the hearing.

The new DFBS process will change in a couple of ways. First, parties can now request a “rehearing” if they are not happy with the final decision of the administrative law judge. The petition for rehearing will be heard by the director of the DFBS and not by the ALJ who heard the case. This process actually involves the DFBS more than just accepting filing fees and forwarding cases to the administrative law judges. Second, the filing fees for complaints may be increased. Previously, the filing fees were \$550 for single claim complaints and \$2,000 for multiple claim complaints. The director of the DFBS has the discretion to change the filing fees, and the fees are supposed to be self-supporting for the program, i.e. the DFBS pays the Office of Administrative Hearings for the time they use its ALJs. When the process stopped two years ago, the collected fees are believed to have been insufficient to meet the amounts owed to the OAH. The DFBS will be considering the filing fee issue in the coming weeks, but we expect it may be increased.