

## **DIVISION 003**

### **MODEL RULES OF PROCEDURE FOR CONTESTED CASES**

#### **Office of Administrative Hearings**

##### **137-003-0505**

##### **Contested Case Notice**

(1) When the agency is required to issue a contested case notice pursuant to ORS 183.415, the notice shall include:

(a) A caption with the name of the agency and the name of the person or agency to whom the notice is issued;

(b) A short and plain statement of the matters asserted or charged and a reference to the particular sections of the statute and rules involved;

(c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

(d) A statement of the party's right to a hearing;

(e) A statement of the authority and jurisdiction under which a hearing is to be held on the matters asserted or charged;

(f) Either:

(A) A statement of the procedure and time to request a hearing, the agency address to which a hearing request should be sent, and a statement that if a request for hearing is not received by the agency within the time stated in the notice the person will have waived the right to a contested case hearing; or

(B) A statement of the time and place of the hearing;

(g) A statement indicating whether and under what circumstances an order by default may be entered;

(h) If the party is an agency, corporation, partnership, limited liability company, trust, government body or an unincorporated association, a statement that the party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise;

(i) If the agency proposes a sanction, the sanction that the agency proposes based on the facts alleged in the notice. If the proposed sanction is not the maximum potential sanction, the agency may also state the maximum potential sanction for each violation and that the agency may impose up to the maximum potential sanction provided in the notice, without amending the notice; and,

(j) Any other information required by law.

(2) A contested case notice may include either or both of the following:

(a) A statement that the record of the proceeding to date, including information in the agency file or files on the subject of the contested case and all materials submitted by a party, automatically become part of the contested case record upon default for the purpose of proving a prima facie case;

(b) A statement that a collaborative dispute resolution process is available as an alternative to a contested case hearing, if requested within the time period stated in the notice, and that choosing such a process will not affect the right to a contested case hearing if a hearing request is received

by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process.

(3) The notice requirements imposed in subsections (1)(h) and (1)(i) apply to all notices issued after January 31, 2012.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.413, 183.415, 183.630 & 183.675

### **137-003-0640**

#### **Immediate Review by Chief Administrative Law Judge**

(1) Before issuance of a proposed order or before issuance of a final order if the administrative law judge has authority to issue a final order, the agency or a party may seek immediate review by the Chief Administrative Law Judge of the administrative law judge's decision on any of the following:

(a) A ruling on a motion to quash a subpoena under OAR 137-003-0585;

(b) A ruling refusing to consider as evidence judicially or officially noticed facts presented by the agency under OAR 137-003-0615 that is not rebutted by a party;

(c) A ruling on the admission or exclusion of evidence based on a claim of the existence or non-existence of a privilege.

(2) The agency by rule or in writing may elect not to make available this process of immediate review by the Chief Administrative Law Judge.

(3) The agency or a party may file a response to the request for immediate review. The response shall be in writing and shall be filed with the Chief Administrative Law Judge within five calendar days after receipt of the request for review with service on the administrative law judge, the agency representative, if any, and any other party.

(4) The mere filing or pendency of a request for the Chief Administrative Law Judge's immediate review, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule, or order.

(5) The Chief Administrative Law Judge shall rule on all requests for immediate review in writing.

(6) The request and ruling shall be made part of the record of the proceeding.

(7) The Chief Administrative Law Judge may designate in writing a person to exercise his or her responsibilities under this rule.

(8) Beginning February 1, 2016, agencies, rather than the Chief Administrative Law Judge, will be responsible for providing the immediate review set out in this rule.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630