
Oregon Department of Justice Lay Representative Program Guide

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Prepared by General Counsel

Contents

Introduction: Department Of Justice Agency Lay Representation in Contested Cases Program Guide.....	3
Department Of Justice Guidance Regarding Agency Lay Representation in Contested Cases.....	4
Chief Counsel’s Office Process for Responding to Agency Request for Lay Rep Authorization (DM#9196296)	6
Attachment 1: Questions for Agency Seeking Authorization to Use Lay Representatives.....	8
A. Provide a basic description the issue(s) for decision in the hearing.....	8
B. Provide a basic description of the type of hearing.	8
C. Provide a basic description of how the agency will identify legal issues or the need for legal argument, and confer with or refer the legal issues to DOJ.	8
Attachment 2: Rule Authorizing Agency Representative _____	9
Attachment 3: Email to Contact Attorney	10
Attachment 4: Email to Contact Attorney	11
Attachment 5: <i>SAMPLE</i> Authorization Letter	12
Attachment 6: <i>SAMPLE</i> BIENNIAL REPORT for Agencies with Approved Lay Representation	15
Reporting and Requirements Timeline	16
1. Reporting.....	16
2. Annual AAG meeting.....	16
DOJ Lay (Authorized, Hearing, or Agency) Representative Program: Proposed Outline for Pilot and New Programs	18
Goals	18
Database Profile.....	19
Annual Agency/AAG Meeting Sample Letter to AAGs and AICs.....	20
2017 Letter from Deputy Chief Counsel	20
<i>DRAFT</i> Agenda for Meeting with Lay Representatives	21
Resources for Lay Representatives	22
Rules and Materials.....	22
Online Course.....	22
CODE OF CONDUCT FOR NON-ATTORNEY REPRESENTATIVES AT ADMINISTRATIVE HEARINGS	23
Standards of Conduct Generally	23
Hearing Conduct	23
Scope of Representation.....	23

Competence and Diligence	24
Communicating with a Party.....	24
Contact with Officials and Ex Parte Contact	24
Lay Representative Related Rules.....	25
OAR 137-003-008.....	25
OAR 137-003-0545.....	27

Introduction: Department Of Justice Agency Lay Representation in Contested Cases Program Guide

This document provides an outline for the process, policy, and procedure for the Oregon Department of Justice (ODOJ) Lay Representative Program for state agencies that we serve.

This document is maintained and updated by the ODOJ Client Legal Training Manager (CLMT), in collaboration with the ODOJ Deputy Chief Counsel and General Counsel Management Assistant.

Department Of Justice Guidance Regarding Agency Lay Representation in Contested Cases

The Attorney General is authorized to consent to lay representation in particular hearings or particular classes of hearings in accordance with ORS 183.452. Such authorization is provided in writing, in the form of a letter from the Attorney General. If your agency does not have such a letter, please contact your DOJ attorney to begin the Lay Representation authorization process.

Use of agency representatives during contested case hearings also requires that the agency, by rule, has authorized agency representatives to appear on its behalf in the particular type of hearing being conducted. The agency's rule should align with the authorization granted by the Attorney General and the requirements of ORS 183.452.

Although some lay representatives have a law degree, they may not act as an attorney for the agency. All lay representatives are prohibited by ORS 183.452(3) from presenting legal argument in contested case hearings or providing legal advice to the agency. If a case may require legal argument, an assistant attorney general (AAG) must be assigned to make legal argument for the agency.

The Attorney General typically consents to lay representation of an agency by its employees in contested case hearings referenced, within certain parameters, for example:

- a. The agency must maintain the authorized administrative rule that describes the “particular types of hearings” for which lay representation has been authorized and that meet the requirements of ORS 183.452. Please consult your agency's assigned legal counsel before amending the rule.
- b. The agency must consult with its assigned legal counsel¹, as early in the case preparation process as possible, if any of the following situations arise: (a) it appears that a case may have a significant impact on the interpretation of state law; (b) it appears that legal issues will be raised in a case; (c) it appears that a hearing may involve an issue beyond the lay representative's ability or authority; or (d) the agency believes the case is likely to result in an appeal. If any of these situations arise *during a hearing*, the agency must consult with its assigned legal counsel and should request time to do so from the administrative law judge or hearing officer.
- c. The agency must consult with its assigned legal counsel if a party is represented by an attorney or notifies the agency of its intent to call an expert witness, where the involvement of counsel or expert witness indicates that legal issues are likely to be raised. Consultation must also occur if one of the parties to the hearing is another state agency.

¹ “Consult with its assigned legal counsel” refers to a timely and meaningful conversation with the agency's assigned AAG that includes sufficient background information so that the AAG can adequately respond to the particular question or issue presented. Unless impossible, this consultation shall occur at least two weeks before the scheduled hearing.

- d. The agency must consult with its assigned legal counsel, or other designated DOJ legal counsel for purposes of criminal matters, if it has reason to believe or if it is notified that there is an ongoing criminal investigation or criminal proceeding involving a party which relates to the contested case hearing.
- e. In hearings in which the potential sanction is disqualification from pursuing a profession and that sanction is contested by the party, the agency must consult with its assigned legal counsel to determine whether legal assistance is warranted.
- f. The agency must ensure that its employees who represent the agency at hearings have the necessary skills and knowledge regarding notices, procedures and conduct of hearings, and that they coordinate and consult with other agency lay representatives and with assigned legal counsel as necessary in order to ensure consistency of agency rule interpretation.
- g. The agency must ensure that its employees who represent the agency at hearings review at least once during each biennium the most recent version of the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by DOJ and available on its website at <http://www.doj.state.or.us>.

An agency authorization is subject to revocation if the Attorney General determines that the best interests of the state require that the agency be represented in its contested case proceedings by an AAG. In addition, DOJ may determine that the state's interests require that an AAG represent the agency in a particular hearing.

Consistent with ORS 183.471, non-exempt agencies are required to maintain their final orders in digital searchable format. The agency must confer with its assigned AAG to identify the categories of final orders that may serve as precedents for future agency cases or which would facilitate effective legal consultation and shall provide a digital searchable version of those final orders, when issued, to its assigned AAG.

On a biennial basis, DOJ will request summary information from agencies about the use of lay representation. This request will be made at the end of the biennium. In addition, the agency's assigned AAG will meet with the agency's lay representatives on an annual basis to review and discuss the Agency's lay representation program.

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Chief Counsel's Office
Process for Responding to Agency Request for Lay Rep Authorization
(DM#9196296)

1. DOJ receives an inquiry or agency request for lay representative approval.
 - a. If the inquiry or request is received by the Chief Counsel's office, the Client Legal Training Manager (CLTM) refers the request to the contact attorney (copy to AIC).
 - b. If the inquiry or request is received by the contact attorney, the contact attorney should send an email to the Chief Counsel, documenting that an inquiry or request has been received, and cc the Deputy Chief Counsel and the CLTM.
 - c. Deputy Chief Counsel sends a letter to the requestor, acknowledging receipt of the inquiry or request and referral to the contact attorney for assistance, cc the CLTM.

2. The Chief Counsel has been delegated the authority to grant consent on behalf of the Attorney General to lay representation. Chief Counsel has asked the Deputy Chief Counsel to assist in the review process. In determining whether to grant approval, we consider information about the agency's legal authority for the requested type of hearing and background provided by the agency and contact attorney, the agency's experience and capacity to administer the lay representation, likelihood of legal issues that require DOJ attorneys for representation, the agency's response to the questions in Attachment 1 and the agency's rule authorizing the requested lay representation. The agency rule must be substantially the same as the rule in Attachment 2.

If the agency already operates under a DOJ authorization, the Client Legal Training Manager (CLTM) will locate the file to facilitate review of existing approvals, and any prior requests. The file should be provided to the Deputy Chief Counsel, and can be available to the AIC or contact attorney for the agency to review upon request.

3. After review and assistance from the contact attorney, a complete request for approval should be sent to the Chief Counsel and Deputy Chief Counsel for review.
 - a. If the agency request includes answers to the Attachment 1 questions and either a draft or adopted rule authorizing lay representation, the contact attorney should provide a brief memo addressed to the Chief Counsel.

A sample email to the contact attorney is in Attachment 3.

- b. If the agency request does not include responses to the Attachment 1 questions or the agency has not provided a copy of a draft or adopted rule authorizing lay representation, the contact attorney should offer to assist the agency to obtain answers to the questions and/or work with the agency to draft a rule authorizing lay representation.

Include Attachments 1 (Questions for Agency Seeking Authorization to use Lay Representatives) and 2 (Rule Authorizing Agency Representative) and the agency request

letter with your email to the contact attorney. A sample email to the contact attorney is in Attachment 4.

After the attorney has worked with the agency to obtain answers to the questions and/or the draft of an appropriate rule, the attorney should follow the directions in 3.a) above.

4. *A sample authorization letter is provided in Attachment 5.* If an existing authorization is being updated:

- a. Identify the prior authorization, and clarify that the new authorization must be accompanied by an appropriate rule before the new authorization becomes effective.
- b. The new authorization should be complete, and should supersede and replace any prior authorizations.

5. The CLTM will ask the contact attorney to confirm the completion of the rule filing process and to provide documentation of the rule that was filed, for our files.

- a. If the rule is a temporary rule, confirm that the permanent rule filing has been made.
- b. If rule materials are not received within 30 days of the approval date, the CLTM will send an email to the contact attorney to request follow-up and documentation of the rule filing.

6. Deputy Chief Counsel will consult with the Training Coordinator about appropriate training opportunities that should be developed for lay representatives. The goal is to offer updated training at least annually, after the end of legislative sessions or upon completion of updates to the DOJ Model Rules or Code of Conduct.

7. A data collection form has been created for each approved agency. This form should be distributed to the agency in June of odd-numbered years, with a request that their response should be provided after the close of the biennium. Precise timing is less important than follow-up with the agency to obtain the information.

- a. The forms should be provided to the Deputy Chief Counsel who should determine whether any follow-up is warranted with the contact attorney.
- b. In some cases, the contact attorney or the Deputy may follow-up with the agency.

A copy of a sample data collection form is Attachment 6.

7. Periodic review should be systematized and scheduled.

- a. Using the most recent approval date, all files that were approved more than 5 years ago should be reviewed and updated.
- b. The CLTM will tickle all current lay representation files, and calendar a review beginning in January of each year.

**Attachment 1:
Questions for Agency Seeking Authorization to Use Lay Representatives**

For each type of hearing where lay representation is requested, please answer the following questions:

A. Provide a basic description the issue(s) for decision in the hearing.

1. What statutes apply to the hearing?
2. What rules of the agency describe the issues that are subject to a right to hearing and the process for requesting a hearing?
3. Is the hearing conducted with an Office of Administrative Hearings Administrative Law Judge or other hearing officer, board or commission?

B. Provide a basic description of the type of hearing.

1. Are the hearings factual in nature, with straightforward application of agency rules?
2. Is it likely that expert witnesses will be called by one or more parties?
3. Is any non-agency party routinely represented by counsel?
4. Does the agency have prior contested case experience?
5. What is the likelihood that the decision will be appealed
6. Does the state have potential tort liability?
7. Is a professional license involved?
8. If it involves a civil penalty, what is the maximum amount of the penalty?
9. Will rulemaking be part of the contested case hearing?
10. Is it likely that there may be a concurrent court proceeding (civil or criminal) on the same or related matters?

C. Provide a basic description of how the agency will identify legal issues or the need for legal argument, and confer with or refer the legal issues to DOJ.

**Attachment 2:
Rule Authorizing Agency Representative**

An agency may use the following form of rule to authorize the appearance of its staff as the agency's representative at contested case hearings pursuant to ORS 183.452:

XXX-XXX-XXXX (1) Subject to the approval of the Attorney General, an officer or employee of this agency is authorized to appear on behalf of the agency in the following types of hearings conducted by this agency:

 [type of hearing]

 [type of hearing] .

(2) Subject to the approval of the Attorney General, an officer or employee of this agency is authorized to appear on behalf of the agency in the following types of hearings conducted before another agency:

 [type of hearing and name of other agency]

 [type of hearing and name of other agency]

 [type of hearing and name of other agency] .

(3) The agency representative may not make legal argument on behalf of the agency.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence;

(E) The correctness of procedures being followed in the contested case hearing.

**Attachment 3:
Email to Contact Attorney**

TO: [Agency Contact Attorney]
COPY: Chief Counsel; Deputy Chief Counsel
FROM: [Client Legal Training Manager]
RE: [Agency] Request for Authorization to Use Lay Representatives

[Agency] has requested authorization pursuant to ORS 183.452 to use lay representatives in certain contested case hearings. See the attached agency request for details. The agency has responded to questions concerning these hearings and has provided an administrative rule authorizing use of lay representatives for our review. I have attached a copy of the questions agencies should answer when requesting lay representative approval (Attachment 1) and the AG's sample rule for lay representatives (Attachment 2).

Please review these materials and prepare a memo for the Chief Counsel and Deputy Chief Counsel with your recommendations. Please also review the attached agency rule to determine whether it is consistent with the sample rule (Attachment 2). You should identify any changes you recommend be made to the rule in your memo to Chief Counsel and Deputy Chief Counsel.

Please copy me on your memo to Chief Counsel and Deputy Chief Counsel.

Attachment 4:
Email to Contact Attorney

TO: [Agency Contact Attorney]
COPY: Chief Counsel; Deputy Chief Counsel
FROM: [Client Legal Training Manager]
RE: [Agency] Request for Authorization to Use Lay Representatives

[Agency] has requested authorization pursuant to ORS 183.452 to use lay representatives in certain contested case hearings. See the attached agency request for details. The agency has not [provided responses to the questions that we ask of agencies seeking lay representative authorization (Attachment 1)] [and has not] [provided us a copy of its draft or adopted administrative rule authorizing the agency to use lay representatives (see sample rule, Attachment 2)]. Please work with the agency to obtain [responses to the attached questions] [and] [an agency rule that is consistent with the attached sample rule].

After you have worked with the agency to obtain [written responses to the questions in Attachment 1] [and] [a rule that is consistent with the sample rule in Attachment 2], please review the agency request for lay representation, the responses to the questions and the agency rule.

Please review these materials and prepare a memo for the Chief Counsel and Deputy Chief Counsel with your recommendations. Please also review the attached agency rule to determine whether it is consistent with the sample rule (Attachment 2). You should identify any changes you recommend be made to the rule in your memo to Chief Counsel and Deputy Chief Counsel.

Please copy me on your memo to Chief Counsel and Deputy Chief Counsel.

Attachment 5:
***SAMPLE* Authorization Letter**

AGENCY Administrator

Re: Agency Lay Representation in AGENCY Contested Cases

Dear xxx,

The Attorney General is authorized to consent to lay representation in particular hearings or particular classes of hearings in accordance with ORS 183.452. The AGENCY requested authorization for agency representation to conduct the following types of contested case hearings:

[Insert listing of all approved types of hearing. This listing should include currently approved, and any additional authorizations.]

AGENCY was previously authorized to use lay representatives for this particular class of hearings by our letter dated #####. The approval here continues the prior authorization under the terms set forth in this letter, and supersedes and replaces the prior authorization letter by the Department of Justice to the AGENCY.

Use of agency representatives during contested case hearings also requires that the agency, by rule, has authorized agency representatives to appear on its behalf in the particular type of hearing being conducted. The agency's rule should align with the authorization granted by the Attorney General and the requirements of ORS 183.452. We rely on OAR xxx-xxx-xxxx as the applicable rule that has been adopted by AGENCY for this purpose.

Lay representatives are prohibited by ORS 183.452(3) from presenting legal argument in contested case hearings or providing legal advice to the AGENCY. If a case may require legal argument, an assistant attorney general must be assigned to make legal argument for the agency.

By this letter, which supersedes any existing lay representation authorizations for the agency, the Attorney General consents to lay representation of AGENCY by its employees in contested case hearings referenced above, within the following parameters:

- a. The agency must maintain the authorized administrative rule that describes the "particular types of hearings" for which lay representation has been authorized and that meet the requirements of ORS 183.452. Please consult your agency's assigned legal counsel before amending the rule.
- b. The agency must consult with its assigned legal counsel concerning any hearing at which:
 - (a) a case has a significant potential impact on interpretation of state law;
 - (b) the agency

anticipates that legal issues will be raised, or (c) that the agency believes is likely to result in an appeal. If legal issues arise during a hearing, the agency must consult with its assigned legal counsel, and should request time to do so from the administrative law judge or hearing officer.

- c. The agency must consult with its assigned legal counsel if a party is represented by an attorney or notifies the agency of their intent to call an expert witness, where the involvement of counsel or expert witness indicates that legal issues are likely to be raised. Consultation must also occur if one of the parties to the hearing is another state agency.
- d. The agency must consult with its assigned legal counsel, or other designated DOJ legal counsel for purposes of criminal matters, if it has reason to believe or if it is notified that there is an ongoing criminal investigation or criminal proceeding involving a party which relates to the contested case hearing.
- e. In hearings in which the potential sanction is disqualification from pursuing a profession and that sanction is contested by the party, the agency must consult with its assigned legal counsel to determine whether legal assistance is warranted.
- f. The agency must ensure that its employees who represent the agency at hearings have the necessary skills and knowledge regarding notices, procedures and conduct of hearings, and that they coordinate and consult with other agency lay representatives and with assigned legal counsel as necessary in order to ensure consistency of agency rule interpretation.
- g. The agency must ensure that its employees who represent the agency at hearings review at least once during each biennium the most recent version of Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by DOJ and available on its website at [Http://www.doj.state.or.us](http://www.doj.state.or.us). A copy of the most recent code of conduct is attached to this letter.

“Consult with its assigned legal counsel” refers to a timely and meaningful conversation with the agency’s assigned assistant attorney general (AAG) that includes sufficient background information so that the AAG can adequately respond to the particular question or issue presented.

This authorization is subject to revocation if the Attorney General determines that the best interests of the state require that the agency be represented in its contested case proceedings by an assistant attorney general. In addition, DOJ may determine that the state’s interests require that an assistant attorney general represent the agency in a particular hearing.

Consistent with ORS 183.471, non-exempt agencies are required to maintain their final orders in digital searchable format. The agency must confer with their assigned AAG to identify the categories of final orders that may serve as precedence for future agency cases or which would facilitate effective legal consultation, and shall provide a digital searchable version of those final orders, when issued, to their assigned AAG. *[OMIT this paragraph if the agency, or the type of hearing, is exempt from ORS 183.471.]*

On a biennial basis, DOJ will be requesting some summary information from the agency about use of lay representation. This request will be made at the end of the biennium (in this case, June 2015) using a format similar to the attached document. We are letting you know in advance, to facilitate your response when you receive the request.

Signature block

Attachment 6:
SAMPLE BIENNIAL REPORT for Agencies with Approved Lay Representation

AGENCY

Instructions: This report covers the most recent biennium. Specifically, provide data for the time period from: July 2013 – June 2015

Numbers of Cases Handled by Lay Representatives

CATEGORY OF CASE APPROVED BY DOJ (See approval letter for details)	NUMBER OF CASES IN THE CATEGORY	DECISION UPHOLD AGENCY		DECISION DID NOT UPHOLD AGENCY		NUMBER OF CASES APPEALED TO ANY COURT
		Proposed order	Final order	Proposed order	Final order	
Hearings arising from						

Roster of Lay Representatives

NAME OF LAY REPRESENTATIVE	EMAIL CONTACT

Listing of Trainings & Biennial Review of Code of Conduct

NAME OF TRAINING & TOPICS COVERED	DATE OF TRAINING	PRESENTER
Biennial review of Code of Conduct		

ATTACHMENTS

Attach a copy of current administrative rule(s) applicable to lay representative authority, and indication of whether any changes to the rule(s) are pending or have been implemented by the agency.

Reporting and Requirements Timeline

(DM#9162293)

- A. Lay Rep biennial reports are due once a biennium, **at the end of the biennium (ending in June of odd numbered years)**
 - a. Offered online and in print
 - b. Online report through Survey Monkey: <https://www.surveymonkey.com/r/LBFXHPW> (current draft as of 10/2/18)
 - c. <https://www.surveymonkey.com/r/2019LRR> as of 10/16/2018
- B. Lay Rep review of the Code of Conduct (CoC) is due **once a biennium**
- C. Meetings with the Contact Attorney are **annual**
 - a. *“The agency’s assigned AAG will meet with the agency’s lay representatives on an annual basis to review and discuss the Agency’s lay representation program.”*
- D. All Lay Reps need to take the **online Lay Rep course within 60 days of start** of their role
 - a. iLearn:
<https://ilearn.oregon.gov/Admin/ContentDetails.aspx?id=206679C5197E4D0A8613262968B92D90>

1. Reporting:

- a. **No later than January/February (with January of the odd year) send letter to contact attorney** to verify rules and information
 - i. **2019 letters were sent to contact attorneys on 11/29/2018**
- b. **May, odd years:** send letter to each agency with lay reps reviewing their approved authority, and:
 - i. **Biennial report** covering (example) July 2017 – June 2019 (odd years), and a **due date of July 31, 2019 (odd years)**
 - 1. **Include the template... and/or**
 - 2. **This report being done in an online survey format for 2019**
 - ii. **Reminder** with a sign-off for Agency Reps for the bi-annual review of the **Code of Conduct**
 - 1. Include survey with report (includes CoC acknowledgement) due July 31, 2019 (odd years)
 - iii. *Registration for the 2019 PLC opens in April of 2019, early bird will end in mid-July, 2019.*
 - 1. *Attorney work for the PLC will begin in July, 2019 as billing will start for the PLC*
 - 2. *Rehearsals should run August through September*
- c. **May 1st, odd years:** send reminder for deadlines on report, with survey link and CoC sign-off
- d. **July 25th, odd years:** send report reminder with survey link and deadline

2. Annual AAG meeting options:

- a. This can be managed through the assigned AAG, and included in their SMART Goals or EIP
- b. We (Cheri via Phyllis?) can schedule these meetings on behalf of the AAGs (30 minutes is enough for most) and Cheri can attend, or not, based on the AAG feedback
- c. Other ideas?

Note: This recommendation is based on the Outline in the [DOJ Guidance Regarding Agency Lay Representation in Contested Cases](#) (last updated in October, 2011)

The letters that were sent out to the Agencies at the end of the 2017 biennium included “*We have also launched an on-line lay representative training program using the state’s iLearn system. All lay representatives should take that training within the next 60 days (and new lay representatives should take the training within 60 days of starting employment). The training covers the basics and is about 30 minutes long. The training is free. Go to <https://ilearn.oregon.gov/Default.aspx?id=206679C5197E4D0A8613262968B92D90> to take the training.*”

DOJ Lay (Authorized, Hearing, or Agency) Representative Program: Proposed Outline for Pilot and New Programs

What:

*Provide information and training to support the work of the ODOJ Client Agency Lay Representatives so that they can provide the most efficient services to our Agencies, better serve Oregonians, **and** ensure that DOJ attorneys AND Agency Lay Representatives are being used to the fullest and most effective use possible.*

Why:

Save Oregonians money, streamline efforts, increase communication, present better prepared cases, save time, and reduce duplicative efforts.

How:

Educate and Train, Support, Inform, Provide Tools, Collaborate

Goals

Ensure that training opportunities and resources are equally accessible, consistent, and up to date, for Lay Representatives serving DOJ Client Agencies.

1. Training, Tools, Resources
 - a. Promote and support professional development for Lay Reps
 - i. Onboarding new programs to Agencies
 1. Review of and understanding of the approved Lay Rep Authority for the Agency
 2. Outline of Lay Representative role requirements
 - a. Provide minimum requirements, experience and skills for the Lay Rep role as needed
 - b. After completion of online DOJ CLT Lay Rep course, review of training needs with contact attorney and Client Legal Training Manager to determine training plan
 - c. Outline recommended training and trainers based on Agency need, current level of training, and current agency resources for training and DOJ resources
 - d. Schedule and implement training plan
 - e. 6 month and 1 year follow-up and training assessment
 - ii. 6 month and 1 year follow-up and training assessment
 - b. Track completion of Lay Rep requirements:
 - i. Mandatory “DOJ Client Training: Role of the Lay Representative in the Contested Case” within 60 days of hire
 - ii. Advanced level course, recommended at least once per biennium
 - iii. Annual review of and sign off on the Code of Conduct
 - iv. Review and understanding of OAR 137-003-0008 and 137-003-0545

2. Communication
 - a. Provide accessible and timely information to Lay Reps, their assigned attorneys, and Agencies
 - b. Provide reporting and feedback tools
3. Data
 - a. Collect feedback on the Lay Rep Program for continuous improvement
 - b. Provide access to biennial reports for tracking work and results

Database Profile

The Lay Rep Profile will be used as a database for information:

- Active Lay Rep contact information
 - Including number of Lay Reps per agency and department
- Lay Rep/agency division assigned attorney
- Professional development profile
 - (date of completion for the online Lay Rep course, and dates of sign-off on eth code of ethics)
- Other (specialty area? credentials? Requests for templates or other information?)

Annual Agency/AAG Meeting Sample Letter to AAGs and AICs

2017 Letter from Deputy Chief Counsel

We are in the process of setting up meetings for you and your agency(ies) with authority to use lay representatives. We have been working to improve the lay representation program for a number of years. In one of her last projects as Deputy, Linda Grimms re-authorized the lay rep programs for all our agencies, sending each agency an individualized letter laying out its lay rep authority, the rules under which it operates, and the general rules under which all lay reps operate.

The letter we sent last week, on which we copied you, is the latest version of that letter. It explains the lay rep program generally and, in particular, the scope of your agency's authority to use lay reps. Please read that letter carefully before the meeting.

Steve and I decided to require a yearly meeting between the lay reps and contact counsel as a way to improve the relationship between GC and the agency lay rep programs. For those of you who already have a good relationship with your agency's lay reps, this meeting will be an opportunity to see them face-to-face, tell them about the new iLearn lay rep training (free!) and other training opportunities at the 2017 Public Law Conference, and to talk about specific issues that are coming up in hearings for them and answer their questions. Cheri Hawkins-Weltz, our new client training coordinator, will be going along with most of you for these meetings (schedule permitting). Cheri can talk about the iLearn training, the PLC training, and other professional development tools that she is busy creating for our lay rep partners.

The purpose here is team-building. We want our lay reps to know that we think they are important partners in our efforts to help their agency avoid or deal efficiently with legal issues. This is not a time to focus on what lay reps should not be doing, but rather a time to focus on helping them to do their jobs better.

Attached is a *suggested* agenda for your meeting with your lay reps. Feel free to modify it as you see fit. Please send whatever agenda you land on to the agency contact with a note to forward to their lay reps (with a copy to Cheri Hawkins-Weltz and Mandy Collingham) a couple of days in advance of your meeting so that they have a better idea what to expect at the meeting.

I am very happy to talk with you individually if you have questions or just want to brainstorm a little about how to make your meeting most productive.

Thanks, Judy

[Signature Block]

DRAFT Agenda for Meeting with Lay Representatives

NOTE: The highlighted bits are explanations of the items and should be deleted before sending Agenda

1. Introductions – depending on circumstances, introduce yourself to the lay reps and explain your contact counsel role, have the lay reps introduce themselves to you (and their colleagues if it is a large, dispersed group). If Cheri is attending, leave time for her to introduce herself, as well.
2. Purpose of Meeting – to get to know each other, to discuss new training opportunities/requirements, and to discuss current issues arising in agency cases
3. Discussion of Training Opportunities/Requirements (Cheri, perhaps Judy, will handle this part.)
4. Current Issues in Agency Cases – you get to start this discussion if you know of issues that are tricky or causing difficulty/confusion for the lay reps. Don't monopolize the conversation, though. Be sure to leave time for the lay reps to raise issues they would like to discuss. You could list issues you are aware of here. That gives the lay reps a chance to think about them before the meeting. For example:
 - Checking that your Notice is correct
 - How to deal with documents produced for the first time at the hearing

Online Resources:

Client Legal Training Calendar Webpage:

<https://www.doj.state.or.us/oregon-department-of-justice/client-resources/client-legal-training/>

iLearn course: “Role of the Lay Representative in the Contested Case”

<https://ilearn.oregon.gov/default.aspx?returnurl=%2fContentDetails.aspx%3fid%3d206679C5197E4D0A8613262968B92D90>

Resources for Lay Representatives

ORS 183.457 and OAR 137-003-0008 and 137-003-0545 permit an officer/employee of an agency to participate on behalf of an agency, with DOJ approval.

Rules and Materials

- [Lay Representative related rules OAR 137-003-0008 and 137-003-0545 »](#)
- [DOJ Guidance regarding Lay Representatives \(PDF\) »](#)
- [Lay Representative Code of Conduct \(PDF\) »](#)

Online Course

You may also be eligible to participate in the online training module through iLearn, [“Role of the Lay Representative in the Contested Case” »](#).

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CODE OF CONDUCT FOR NON-ATTORNEY REPRESENTATIVES AT ADMINISTRATIVE HEARINGS

June 1, 2011

Amended October 1, 2011

Standards of Conduct Generally

1. When representing a party or agency in a contested case, the representative is expected to act professionally, with integrity, and in an ethical manner, in accordance with the “Code of Conduct for Non-Attorney Representatives at Administrative Hearings.”
2. A representative is expected to treat all parties, agency representatives, and Administrative Law Judges and their staff, courteously and fairly.
3. A representative may not offer compensation or anything of value to the Administrative Law Judge or agency decisionmaker in an attempt to influence the decision in a case.
4. These standards of conduct apply at every stage of a contested case.

Hearing Conduct

1. A representative may not suppress any evidence that the representative has a legal obligation to reveal or produce.
2. The representative may present evidence; question witnesses, address legal issues to the extent permitted by law, and perform other functions that foster development of a full and fair record in the proceeding so that the agency can take the correct action.

Scope of Representation

1. A representative must observe the limits placed by statutes and rules on his or her authority and conduct.
2. A representative may not give legal advice to the agency or to a party.
3. A representative must communicate proposed offers of settlement to the party. A representative of an agency must communicate proposed offers of settlement to the agency employee who has authority to accept or reject settlement offers.

Competence and Diligence

1. A representative should be competent to represent the party or agency, and knowledgeable of the facts of the case, statutes and rules that apply to the case.
2. The representative should know the agency and model rules of procedure applicable to the case.
3. The representative should be adequately prepared for the hearing and attend to matters in a timely manner, including submission of evidence and providing discovery to other parties.

Communicating with a Party

1. A representative may not communicate directly on the subject of the representation with a party or agency that the representative knows to be represented by a lawyer on that subject unless the representative has the prior consent of the lawyer or is authorized by law to do so.
2. A representative must not give legal advice to a person who is not represented, other than the advice to secure representation.
3. A representative or agency employee may not discourage a person from seeking legal advice or representation, or from exercising the right to a hearing.
4. A representative communicating with a person, agency or another representative must disclose who he or she is representing.

Contact with Officials and Ex Parte Contact

1. If a representative communicates in writing with an administrative law judge before whom a contested case proceeding is pending about the proceeding, the representative must immediately send a copy of the written communication to all parties or their representatives, and to the agency.
2. A representative must give advance notice to all parties or their representatives, and the agency, of any oral communications with an administrative law judge regarding a contested case proceeding. The other parties, their representatives, and the agency must be given the opportunity to participate in the communication. This does not include requests for hearing postponements.

Lay Representative Related Rules

OAR 137-003-008

Department of Justice

Chapter 137

Division 3

MODEL RULES OF PROCEDURE FOR CONTESTED CASES

137-003-0008

Authorized Representative in Designated Agencies

(1) For purposes of this rule, the following words and phrases have the following meaning:

(a) “Agency” means State Landscape Contractors Board, State Department of Energy and the Energy Facility Siting Council, Environmental Quality Commission and the Department of Environmental Quality; Insurance Division of the Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505; the Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by 455.010; the State Fire Marshal in the Department of State Police; Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 196.800 to 196.825; Public Utility Commission; Water Resources Commission and the Water Resources Department; Land Conservation and Development Commission and the Department of Land Conservation and Development; State Department of Agriculture for purposes of hearings under 215.705; and the Bureau of Labor and Industries.

(b) “Authorized Representative” means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, or an authorized officer or employee of a governmental authority other than a state agency;

(c) “Legal Argument” includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(C) The application of court precedent to the facts of the particular contested case proceeding.

(d) “Legal Argument” does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

- (B) Comparison of prior actions of the agency in handling similar situations;
 - (C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;
 - (D) The admissibility of evidence; and
 - (E) The correctness of procedures being followed in the contested case hearing.
- (2) A party or limited party participating in a contested case hearing before an agency listed in subsection (1)(a) of this rule may be represented by an authorized representative as provided in this rule if the agency has by rule specified that authorized representatives may appear in the type of contested case hearing involved.
- (3) Before appearing in the case, an authorized representative must provide the presiding officer with written authorization for the named representative to appear on behalf of a party or limited party.
- (4) The presiding officer may limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing records, and shall not allow an authorized representative to present legal argument as defined in subsection (1)(c) of this rule.
- (5) When an authorized representative is representing a party or limited party in a hearing, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, the presiding officer shall provide reasonable opportunity for the authorized representative to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Statutory/Other Authority: ORS 183.457

Statutes/Other Implemented: ORS 183.341(1), & 183.457 & OL 1999, Ch. 448 & Ch. 599

History:

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 6-1995, f. 8-25-95, cert. ef. 9-9-95

JD 6-1993, f. 11-1-93, cert. ef. 11-4-93

JD 7-1991, f. & cert. ef. 11-4-91

JD 1-1988, f. & cert. ef. 3-3-88

JD 4-1987(Temp), f. & ef. 7-22-87

OAR 137-003-0545

Department of Justice

Chapter 137

Division 3

MODEL RULES OF PROCEDURE FOR CONTESTED CASES

137-003-0545

Representation of Agency by Attorney General or Agency Representative

- (1) An agency may be represented at a contested case hearing by the Attorney General.
- (2) An agency may be represented at a contested case hearing by an officer or employee of the agency if the Attorney General has consented to that representation in a particular hearing or class of hearings and the agency, by rule, has authorized an agency representative to appear on its behalf in the particular type of contested case hearing involved.
- (3) The administrative law judge shall not allow an agency representative appearing under section (2) of this rule to present legal argument as defined in this rule.
 - (a) "Legal Argument" includes arguments on:
 - (A) The jurisdiction of the agency to hear the contested case;
 - (B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;
 - (C) The application of court precedent to the facts of the particular contested case proceeding.
 - (b) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:
 - (A) The application of the statutes or rules to the facts in the contested case;
 - (B) Comparison of prior actions of the agency in handling similar situations;
 - (C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;
 - (D) The admissibility of evidence; and
 - (E) The correctness of procedures being followed in the contested case hearing.
- (4) If the administrative law judge determines that statements or objections made by an agency representative appearing under section (2) involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the agency representative to

consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) An agency representative appearing under section (2) must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings dated June 1, 2011, as amended October 1, 2011, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>.

Statutory/Other Authority: ORS 183.341

Statutes/Other Implemented: ORS 183.341, 183.452 & 183.630

History:

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00