
Oregon Department of Justice Lay
Representative Program Guide

Updated 1/5/2024

Prepared by the General Counsel
Division

Contents

Introduction..... 1

Overview of Agency Lay Representation in Contested Cases2

Process for Requesting Attorney General’s Authorization of a NEW Lay Representative Program
.....4

Process for Requesting Attorney General’s REAUTHORIZATION of an Existing Lay
Representative Program6

Process for Requesting Attorney General’s Authorization to EXPAND a Lay Representative
Program.....8

Template 1A: Sample Memo from Agency's Assigned Attorney to Chief Counsel
(For a NEW Lay Representative Program)..... 10

Template 1B: Sample Memo from Agency's Assigned Attorney to Chief Counsel
(For REAUTHORIZATION of an Existing Lay Representative Program) 11

Template 1C: Sample Memo from Agency's Assigned Attorney to Chief Counsel
(For an EXPANSION of an Existing Lay Representative Program)..... 13

Template 2: Questions for Agency Seeking Authorization to Use Lay Representatives 15

Template 3: Sample Rule Authorizing Agency Representative 16

Template 4: Sample Authorization Letter..... 17

Template 5: Sample Biennial Report for Agencies with Approved Lay Representation20

Lay Representative Resources 21

Code of Conduct for Non-Attorney Representatives at Administrative Hearings 22

Lay Representative Legal References..... 24

183.452 Representation of agencies at contested case hearings 24

OAR 137-003-0545 24

Introduction

This document outlines the policy and procedure for how the Attorney General evaluates, authorizes, and provides oversight of lay representative programs in state agencies that the Oregon Department of Justice (DOJ) serves.

This document is maintained and updated by the Lay Representative Coordinator, the Chief Counsel, and the General Counsel Management Assistant.

Overview of Agency Lay Representation in Contested Cases

A “lay representative” is an agency employee who presents the agency’s case in a contested case hearing. Lay representatives are also sometimes referred to as “agency representatives,” “hearing representatives,” or “case presenters.”

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 and wishes to obtain one, 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.

If the Attorney General consents to lay representation of an agency by its employees in contested case hearings, that authorization is typically subject to the following requirements:

1. The agency must maintain an 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.
2. 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. Legal issues may be raised in the case;
 - b. A case may have significant impact on interpretation of state law;
 - c. A case may involve an issue beyond the lay representative’s ability or authority to address;
 - d. The case will likely result in an appeal;
 - e. A party is represented by an attorney or notifies the agency of its intent to call an expert witness;

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.

- f. One of the parties is another state agency;
 - g. There may be a related, ongoing criminal investigation or criminal proceeding; or
 - h. Disqualification from pursuing a profession is a potential sanction and that sanction is contested by the party.
3. 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 that statutes and rules are interpreted and applied consistently.
 4. The agency must ensure that its lay representatives 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 at https://www.doj.state.or.us/wp-content/uploads/2017/06/code_of_conduct_oah_contested.pdf.
 5. The agency's lay representatives must meet with the agency's assigned legal counsel on an annual basis to review and discuss the agency's lay representation program.
 6. Unless exempt, ORS 183.471 requires the agency to maintain its final orders in a digital, searchable format. The agency must confer with its assigned counsel to identify the categories of final orders that may serve as precedents for future agency cases or that would facilitate effective legal consultation and shall provide a digital searchable version of those final orders, when issued, to its assigned counsel.
 7. The agency must provide summary information to DOJ regarding the lay representation program. DOJ will typically request such information once each biennium.

An agency authorization to use lay representatives is subject to revocation by the Attorney General. In addition, the Attorney General may determine that an agency must be represented by an AAG in a particular hearing.

Process for Requesting Attorney General's Authorization of a NEW Lay Representative Program

1. Chief Counsel Renee Stineman has been delegated the authority to consent to lay representation on behalf of the Attorney General. Senior Assistant Attorney General (AAG) Rachel Weisshaar and Lay Representative Coordinator Nancy Barrera assist in administering the lay representative program.
2. When an agency wishes to request lay representative authorization from DOJ for a new lay representative program, the agency should work with its assigned counsel to submit the following package of materials to rachel.weisshaar@doj.state.or.us and nancy.barrera@doj.state.or.us:

A cover memo from the agency's assigned counsel (see Template 1A, "Sample Memo from Agency's Assigned Attorney to Chief Counsel (For a NEW Lay Representative Program)"), with the following attachments:

- a. A letter from the agency addressing:
 - (1) Why it is seeking to establish a new lay representative program;
 - (2) What experience, if any, it has implementing a lay representative program;
 - (3) Which agency staff are primarily responsible for implementing the new lay representative program;
 - (4) The timeline for implementing the new lay representative program; and
 - (5) Any other information the agency would like the Attorney General to consider in determining whether to approve the new lay representative program.
- b. The agency's responses to the questions in Template 2, "Questions for Agency Seeking Authorization to Use Lay Representatives."
- c. A copy of the agency's rule or draft rule authorizing the requested lay representation, which must be substantially the same as the rule in Template 3, "Sample Rule Authorizing Lay Representative."

If the request is complete, the Lay Representative Coordinator will send an email acknowledgment to the agency's assigned attorney. If the request for authorization is incomplete, it will be returned to the agency's assigned attorney for completion and resubmission.

3. In determining whether to authorize a new lay representative program, the Chief Counsel considers the agency's legal authority for the requested type(s) of hearing; background information provided by the agency and its assigned 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 Template 2; and the agency's rule authorizing the requested lay representation.

4. If, after reviewing an agency request for a new lay representative program, the Chief Counsel decides to authorize the program, the Chief Counsel will issue an authorization letter to the agency. A sample authorization letter is provided in Template 4. The authorization letter will describe the scope of the authorized lay representative program and will clarify that the authorization must be accompanied by an appropriate rule before it becomes effective. The Lay Representative Coordinator will ask the agency's assigned attorney to confirm the completion of the rule filing process and to provide documentation of the rule that was filed, for DOJ files. If rule materials are not received within 30 days of the date the authorization letter is issued, the Lay Representative Coordinator will send an email to the assigned attorney requesting documentation of the rule filing.
5. Once the Chief Counsel authorizes an agency's lay representative program, the agency is required to fulfill certain obligations. By August 1 of each odd-numbered year, the assigned attorney for each agency with an existing lay representative program should work with the agency to submit a complete request for lay representative reauthorization to the Chief Counsel. The process for seeking reauthorization of an existing lay representative program is set forth starting on the following page, in the section entitled "Process for Requesting Attorney General's REAUTHORIZATION of an Existing Lay Representative Program."
6. The agency and its assigned attorney must submit a request for lay representative reauthorization every two years even if the agency is not seeking to change the scope of an existing lay representative program. The Chief Counsel will review the requests for lay representative reauthorization and will issue authorization letters if appropriate. Note: Although the goal is to reauthorize an agency's lay representative program, if warranted, each biennium, the Attorney General's authorizations are indefinite and do not expire at the close of the biennium.
7. Agencies should direct questions regarding the lay representative program to their assigned DOJ attorney, or to Senior AAG Rachel Weisshaar.

Process for Requesting Attorney General's REAUTHORIZATION of an Existing Lay Representative Program

1. Chief Counsel Renee Stineman has been delegated the authority to consent to lay representation on behalf of the Attorney General. Senior Assistant Attorney General (AAG) Rachel Weisshaar and Lay Representative Coordinator Nancy Barrera assist in administering the lay representative program.
2. When an agency would like the Attorney General to reauthorize its existing lay representative program, without changing the types of hearings its lay representatives are authorized to handle, the agency should work with its assigned counsel to submit the following package of materials to rachel.weisshaar@doj.state.or.us and nancy.barrera@doj.state.or.us by August 1 of each odd-numbered year:

A cover memo from the agency's assigned counsel (see Template 1B, "Sample Memo from Agency's Assigned Attorney to Chief Counsel (For REAUTHORIZATION of an Existing Lay Representative Program)"), with the following attachments:

- a. The agency's responses to the questions in Template 2, "Questions for Agency Seeking Authorization to Use Lay Representatives." The agency may either answer the questions, or it may indicate that its answers are identical to those it previously submitted and enclose a copy of those previously submitted answers.
- b. A copy of the agency's rule authorizing the requested lay representation, which must be substantially the same as the rule in Template 3, "Sample Rule Authorizing Lay Representative."
- c. A completed copy of Template 5, "Sample Biennial Report for Agencies with Approved Lay Representation," for the immediately preceding biennium.

If the request for reauthorization is complete, the Lay Representative Coordinator will send an email acknowledgment to the agency's assigned attorney. If the request for reauthorization is incomplete, it will be returned to the agency's assigned attorney for completion and resubmission.

3. In determining whether to renew an existing lay representative program, the Chief Counsel considers the agency's legal authority for the requested type(s) of hearing; background information provided by the agency and its assigned 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 Template 2; and the agency's rule authorizing the requested lay representation.

4. The Lay Representative Coordinator will locate the file for the agency's existing lay representative program, including any prior requests or authorization letters. The file should be provided to the Chief Counsel and Senior AAG Rachel Weisshaar and can be available to others upon request.
5. If, after reviewing an agency request to reauthorize an existing lay representative program (without changing the types of cases covered), the Chief Counsel decides to reauthorize an existing lay representative program, the new authorization will:
 - a. Identify the prior authorization, and clarify that an appropriate rule must be in effect before the new authorization becomes effective; and
 - b. Supersede and replace any prior authorizations. A sample authorization letter is provided in Template 4.
6. Although the goal is to reauthorize an agency's lay representative program, if warranted, each biennium, the Attorney General's authorizations are indefinite and do not expire at the close of the biennium.
7. Agencies should direct questions regarding the lay representative program to their assigned DOJ attorney, or to Senior AAG Rachel Weisshaar.

Process for Requesting Attorney General's Authorization to EXPAND a Lay Representative Program

1. Chief Counsel Renee Stineman has been delegated the authority to consent to lay representation on behalf of the Attorney General. Senior Assistant Attorney General (AAG) Rachel Weisshaar and Lay Representative Coordinator Nancy Barrera assist in administering the lay representative program.
2. When an agency wishes to request lay representative authorization from DOJ to expand the scope of an existing lay representative program, the agency should work with its assigned counsel to submit the following package of materials to rachel.weisshaar@doj.state.or.us and nancy.barrera@doj.state.or.us:

A cover memo from the agency's assigned counsel (see Template 1C, "Sample Memo from Agency's Assigned Attorney to Chief Counsel (for an EXPANSION of an Existing Lay Representative Program)"), with the following attachments:

- a. A letter from the agency addressing:
 - (1) Why it is seeking to expand the scope of an existing lay representative program;
 - (2) What experience it has implementing a lay representative program;
 - (3) Which agency staff are primarily responsible for implementing the expanded lay representative program;
 - (4) The timeline for implementing the expanded lay representative program; and
 - (5) Any other information the agency would like the Attorney General to consider in determining whether to approve the expanded lay representative program.
- b. The agency's responses to the questions in Template 2, "Questions for Agency Seeking Authorization to Use Lay Representatives."
- c. A copy of the agency's rule or draft rule authorizing the requested lay representation, which must be substantially the same as the rule in Template 3, "Sample Rule Authorizing Lay Representative."

If the request is complete, the Lay Representative Coordinator will send an email acknowledgment to the agency's assigned attorney. If the request is incomplete, it will be returned to the agency's assigned attorney for completion and resubmission.

3. In determining whether to authorize the expansion of an existing lay representative program, the Chief Counsel considers the agency's legal authority for the requested type(s) of hearing; background information provided by the agency and its assigned 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 Template 2; and the agency's rule authorizing the requested lay representation.

4. If, after reviewing an agency request to expand an existing lay representative program, the Chief Counsel decides to authorize the expansion, the Chief Counsel will issue an authorization letter to the agency. A sample authorization letter is provided in Template 4. The authorization letter will describe the scope of the authorized lay representative program and will clarify that the authorization must be accompanied by an appropriate rule before it becomes effective. The Lay Representative Coordinator will ask the agency's assigned attorney to confirm the completion of the rule filing process and to provide documentation of the rule that was filed, for DOJ files. If rule materials are not received within 30 days of the date the authorization letter is issued, the Lay Representative Coordinator will send an email to the assigned attorney requesting documentation of the rule filing.
5. Once the Chief Counsel authorizes the expansion of an agency's lay representative program, the agency is required to fulfill certain obligations. By August 1 of each odd-numbered year, the assigned attorney for each agency with an existing lay representative program should work with the agency to submit a complete request for lay representative reauthorization to the Chief Counsel. The process for seeking reauthorization of an existing lay representative program is set forth earlier in this document, in the section entitled "Process for Requesting Attorney General's REAUTHORIZATION of an Existing Lay Representative Program."
6. The agency and its assigned attorney must submit a request for lay representative reauthorization every two years even if the agency is not seeking to change the scope of an existing lay representative program. The Chief Counsel will review the requests for lay representative reauthorization and will issue authorization letters if appropriate. Note: Although the goal is to reauthorize an agency's lay representative program, if warranted, each biennium, the Attorney General's authorizations are indefinite and do not expire at the close of the biennium.
7. Agencies should direct questions regarding the lay representative program to their assigned DOJ attorney, or to Senior AAG Rachel Weisshaar.

**Template 1A:
Sample Memo from Agency's Assigned Attorney to Chief Counsel
(For a NEW Lay Representative Program)**

DATE: [Date]

TO: Renee Stineman, Chief Counsel
General Counsel Division
Oregon Department of Justice

Rachel Weisshaar, Senior AAG
General Counsel Division
Oregon Department of Justice

CC: Nancy Barrera, Lay Representative Coordinator
General Counsel Division
Oregon Department of Justice

FROM: [Agency's Assigned Attorney]
General Counsel Division
Oregon Department of Justice

SUBJECT: [Agency] Request for Authorization to Use Lay Representatives in [Types of Hearings]

Please mark one of the following:

- I recommend that the Chief Counsel approve [Agency]'s request for lay representative authorization in [types of contested case hearings].
- I recommend that we set a meeting to review [Agency]'s request for lay representative authorization in [types of contested case hearings].

The following materials are enclosed with this memo:

- Attachment 1: Agency Letter Requesting Lay Representative Authorization
- Attachment 2: Questions for Agency Seeking Authorization to Use Lay Representatives
- Attachment 3: Rule Authorizing Agency Representative

I have reviewed the rule in Attachment 3 and advise that it is consistent with the sample rule provided in the Oregon Department of Justice Lay Representative Program Guide.

[Note to assigned attorney: Using the information submitted by the agency in Attachments 1-3 and the knowledge you have gained in the course of representing the agency, please evaluate whether the agency has the capacity and expertise to implement a lay representative program for the hearing type(s) indicated. Delete this paragraph before submitting your memo.]

**Template 1B:
Sample Memo from Agency's Assigned Attorney to Chief Counsel
(For REAUTHORIZATION of an Existing Lay Representative Program)**

DATE: [Date]

TO: Renee Stineman, Chief Counsel
General Counsel Division
Oregon Department of Justice

Rachel Weisshaar, Senior AAG
General Counsel Division
Oregon Department of Justice

CC: Nancy Barrera, Lay Representative Coordinator
General Counsel Division
Oregon Department of Justice

FROM: [Agency's Assigned Attorney]
General Counsel Division
Oregon Department of Justice

SUBJECT: [Agency] Request for Reauthorization of Lay Representative Program in [Types of Hearings]

Please mark one of the following:

- I recommend that the Chief Counsel approve [Agency]'s request for lay representative reauthorization in [types of contested case hearings].
- I recommend that we set a meeting to review [Agency]'s request for lay representative reauthorization in [types of contested case hearings].

The following materials are enclosed with this memo:

- Attachment 1: Questions for Agency Seeking Authorization to Use Lay Representatives
- Attachment 2: Rule Authorizing Agency Representative
- Attachment 3: Biennial Report for Agencies with Approved Lay Representation

I have reviewed the rule in Attachment 2 and advise that it is consistent with the sample rule provided in the Oregon Department of Justice Lay Representative Program Guide.

[Note to assigned attorney: Using the information submitted by the agency in Attachments 1-3 and the knowledge you have gained in the course of representing the agency, please evaluate the agency's existing lay representative program. Please describe instances in which the agency has consulted you regarding contested cases handled by lay representatives, or has referred contested cases to you. Please describe what you see as the strengths of the agency's lay representative program, and any areas in which the agency's program could improve. If you have suggestions for

how you or the agency could improve the agency's lay representative program, please provide those suggestions here. Delete this paragraph before submitting your memo.]

**Template 1C:
Sample Memo from Agency's Assigned Attorney to Chief Counsel
(For an EXPANSION of an Existing Lay Representative Program)**

DATE: [Date]

TO: Renee Stineman, Chief Counsel
General Counsel Division
Oregon Department of Justice

Rachel Weisshaar, Senior AAG
General Counsel Division
Oregon Department of Justice

CC: Nancy Barrera, Lay Representative Coordinator
General Counsel Division
Oregon Department of Justice

FROM: [Agency's Assigned Attorney]
General Counsel Division
Oregon Department of Justice

SUBJECT: [Agency] Request for Authorization to Use Lay Representatives in [Types of Hearings]

Please mark one of the following:

- I recommend that the Chief Counsel approve [Agency]'s request for lay representative authorization in [types of contested case hearings].
- I recommend that we set a meeting to review [Agency]'s request for lay representative authorization in [types of contested case hearings].

The following materials are enclosed with this memo:

- Attachment 1: Agency Letter Requesting Lay Representative Authorization
- Attachment 2: Questions for Agency Seeking Authorization to Use Lay Representatives
- Attachment 3: Rule Authorizing Agency Representative
- Attachment 4: Biennial Report for Agencies with Approved Lay Representation

I have reviewed the rule in Attachment 3 and advise that it is consistent with the sample rule provided in the Oregon Department of Justice Lay Representative Program Guide.

[Note to assigned attorney: Please summarize the existing and new hearing type(s). Using your knowledge of agency programs and the information submitted by the agency in Attachments 1-4, evaluate the successes and challenges of the agency's existing lay representative program and whether the agency has the capacity and expertise to expand the program to the new hearing type(s). Compare the types of hearings to which the agency wishes to expand its lay representative program with the

types of hearings for which the agency currently has authorization to use lay representatives. Indicate whether the challenges presented by the new hearing types are likely to be similar to or different from the challenges presented by the already-authorized hearing types.

Please describe what you see as the strengths of the agency's lay representative program, and any areas in which the agency's program could improve. If you have suggestions for how you or the agency could improve the agency's lay representative program, please provide those suggestions here. Delete this paragraph before submitting your memo.]

**Template 2:
Questions for Agency Seeking Authorization to Use Lay Representatives**

Please mark one of the following:

- The agency is seeking reauthorization of an existing lay representative program, and the agency has attached a copy of its most recent answers to the questions in this form. The agency's answers have not changed.
- The agency is seeking reauthorization of an existing lay representative program, and the agency has answered the questions in this form.
- The agency is seeking authorization to expand an existing lay representative program, and the agency has answered the questions in this form.
- The agency is seeking authorization for an entirely new lay representative program, and the agency has answered the questions in this form.

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

A. Provide a basic description of 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.

**Template 3:
Sample 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; or

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

**Template 4:
Sample Authorization Letter**

Dear [insert text here]:

The Attorney General is authorized to consent to lay representation in particular hearings or particular classes of hearings in accordance with ORS 183.452. By letter dated [Insert date from last Renewal later] to [AGENCY], the Attorney General consented to lay representation by your employees in the following types of contested case hearings:

[insert hearing categories]

By this letter, which supersedes and replaces 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, on the following conditions:

- a. The agency must maintain an administrative rule authorizing lay representation that describes the particular types of hearings for which lay representation has been authorized and otherwise meets the requirements of ORS 183.452. We rely on OAR [INSERT OAR #] as the applicable rule that has been adopted by [AGENCY] for this purpose. Please consult your agency's assigned attorney before amending the rule.
- b. ORS 183.452(3) prohibits lay representatives from presenting legal argument in contested case hearings or providing legal advice to the agency. To assess whether legal issues will likely arise, to allow timely assignment of legal counsel to present legal argument as necessary, and to otherwise ensure adequate representation, the agency must consult with its assigned attorney as soon as possible if any of the following apply:
 - (1) Legal issues may be raised in the case;
 - (2) A case may have significant impact on interpretation of state law;
 - (3) A case may involve an issue beyond the lay representative's ability or authority to address;
 - (4) The case will likely result in an appeal;
 - (5) A party is represented by an attorney or notifies the agency of its intent to call an expert witness;
 - (6) One of the parties is another state agency;
 - (7) There may be a related, ongoing criminal investigation or criminal proceeding; or
 - (8) Disqualification from pursuing a profession is a potential sanction and that sanction is contested by the party.
- c. The agency must ensure that its lay representatives 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 the agency's assigned attorney as necessary to ensure consistency of agency rule interpretation.

- d. The agency must ensure that its lay representatives 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 the Department of Justice (DOJ) and available on its website under [DOJ Lay Rep Code of Conduct \(pdf\)](#) (copy enclosed).

Consultation with assigned counsel, as referenced above, includes timely and meaningful conversation providing sufficient background so the assigned attorney can adequately respond to the particular question or issue presented. Unless impossible, this consultation shall occur at least two weeks before the scheduled hearing. If any of the above situations develop during a hearing, the agency must consult with its assigned attorney immediately and should request time to do so from the administrative law judge or hearing officer.

The Attorney General may suspend or revoke this authorization, in whole or in part.

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 attorney to identify the categories of final orders that may serve as precedent or facilitate effective legal representation and shall provide a digital searchable version of those final orders to its assigned attorney.

Prior to providing lay representation services, all lay representatives are required to complete training about the lay representative program and the scope of a lay representative's authority. The training is available online through Workday at <https://wd5.myworkday.com/oregon/learning/course/7970556ead401001f71a38d2dd460001?record=0aaae1c092a61000bee629b5860a0001&type=9882927d138b100019b928e75843018d>.

Lay representatives are required to meet with the agency's assigned counsel annually to discuss the lay representative program.

By August 1 of each odd-numbered year, the agency should work with its assigned counsel to submit a complete request for lay representative reauthorization to the Chief Counsel. The process for seeking reauthorization of an existing lay representative program is set forth in the Oregon Department of Justice Lay Representative Program Guide, available at <https://www.doj.state.or.us/oregon-department-of-justice/client-resources/resources-for-lay-representatives/>, in the section entitled "Process for Requesting Attorney General's REAUTHORIZATION of an Existing Lay Representative Program." When an agency submits a request for reauthorization of an existing lay representative program, it must provide data regarding its lay representative program during the previous biennium (copy of Sample Biennial Report for Agencies with Approved Lay Representation enclosed).

The agency and its assigned attorney must submit a request for lay representative authorization every two years even if the agency is not seeking to change the scope of an existing lay representative program. The Chief Counsel will review the requests for lay representative authorization for the new biennium and will issue authorization letters for the new biennium if appropriate. Note: Although the goal is to reauthorize an agency's lay representative program, if

warranted, each biennium, the Attorney General's authorizations are indefinite and do not expire at the close of the biennium.

Thank you for your attention to these requirements. If you have questions about the lay representative program, please contact your assigned attorney.

Sincerely,

Renee Stineman
Chief Counsel
General Counsel Division

**Template 5:
Sample Biennial Report for Agencies with Approved Lay Representation**

[AGENCY]

Instructions: Please provide data for the most recently concluded biennium (July 20[] – June 20[]).

Cases Handled by Lay Representatives

CATEGORY OF CASE APPROVED BY DOJ (see approval letter for details)	NUMBER OF CASES IN CATEGORY	NUMBER OF CASES APPEALED TO ANY COURT	NUMBER OF CASES REQUIRING DOJ ASSISTANCE, AND FOR WHICH REASONS
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(S)	ATTENDEE NAME(S)
Biennial review of Code of Conduct			

Dates of annual meetings between lay representatives and assigned DOJ attorney:

Lay Representative Resources

[Lay representative statute, ORS 183.452](#)

[Lay representative rule, OAR 137-003-0545](#)

[Department of Justice Resources for Lay Representatives](#)

- Lay Representative Program Guide
- Overview of Agency Lay Representation in Contested Cases
- Lay Representative Code of Conduct

[Client Legal Training Calendar Webpage](#)

“[Role of the Lay Representative in the Contested Case](#)” (all lay representatives must take this Workday course before providing lay representation services)

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 Legal References

183.452 Representation of agencies at contested case hearings

(1) Agencies may, at their discretion, be represented at contested case hearings by the Attorney General.

(2) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, and unless otherwise authorized by another law, an agency may be represented at contested case hearings by an officer or employee of the agency if:

(a) The Attorney General has consented to the representation of the agency by an agency representative in the particular hearing or in the class of hearings that includes the particular hearing; and

(b) The agency, by rule, has authorized an agency representative to appear on its behalf in the particular type of hearing being conducted.

(3) An agency representative acting under the provisions of this section may not give legal advice to an agency, and may not present legal argument in contested case hearings, except to the extent authorized by subsection (4) of this section.

(4) The officer presiding at a contested case hearing in which an agency representative appears under the provisions of this section may allow the agency representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(5) Upon judicial review, no limitation imposed under this section on an agency representative is the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a party.

(6) The Attorney General may prepare model rules for agency representatives authorized under this section. [1999 c.448 §3]

OAR 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