

## 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 counsel<sup>1</sup>, 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;

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<sup>1</sup> “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](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.