

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

ELECT 18-2023

CHAPTER 165
SECRETARY OF STATE
ELECTIONS DIVISION

FILED
12/13/2023 8:24 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Updating statutes; allowing Division employee representation at contested case hearings.

EFFECTIVE DATE: 12/14/2023

AGENCY APPROVED DATE: 12/07/2023

CONTACT: Bob Roberts
503-986-1518
elections.sos@sos.oregon.gov

Public Service Building
255 Capitol Street NE, Suite 126
Salem, OR 97310

Filed By:
Bob Roberts
Rules Coordinator

AMEND: 165-001-0036

NOTICE FILED DATE: 10/06/2023

RULE SUMMARY: The proposed amendments to this rule would allow the Elections Division to be represented by division staff members in contested cases involving ORS 260.275, 260.281, and 260.285. The proposed amendments also remove references to repealed statutes.

CHANGES TO RULE:

165-001-0036

Employee Representation at Contested Case Hearings ¶¶

(1) The Agency's goal in contested case hearings is to have a full and accurate record upon which the Agency can make the best decision. To help ensure a full record, the Agency allows employees to represent the Agency in certain contested case hearings. The employee representative's role is to represent the Agency in a way that supports objective fact finding and encourages an open, fair, and efficient process.¶¶

(2) An Agency employee may represent the Agency in contested case hearings involving violations of ORS 260.035, 260.039, 260.041, 260.042, 260.044, 260.054, 260.055, 260.057, 260.076, 260.078, 260.083, 260.1012, 260.1128, 260.275, 260.418, 281 and 260.73285.¶¶

(3) The representative's responsibilities include, but are not limited to:¶¶

(a) Presenting evidence;¶¶

(b) Asking questions of all witnesses;¶¶

(c) Presenting information about the facts, and advocating for staff's position surrounding the facts;¶¶

(d) Presenting information on how the facts apply to the statutes or rules directly related to the issues in the contested case;¶¶

(e) Presenting information comparing Agency actions in similar situations;¶¶

(f) Presenting information about the literal meaning of the statutes or rules that apply to the issues in the contested case; and¶¶

(g) Presenting information about the admissibility of evidence or the correctness of procedures being followed.¶¶

(4) The employee representative may not make legal arguments. "Legal arguments" include 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 the Agency; and¶¶

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

(5) When an employee represents the Agency in a contested case hearing, the presiding officer will advise the employee representative of the way in which objections may be made. This advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objections. If the objections involve legal argument, the presiding officer will provide reasonable opportunity for the employee representative to consult legal counsel and permit legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Statutory/Other Authority: ORS 246.150

Statutes/Other Implemented: ORS 260.232, ORS 260.995, ORS 260.285