

## Elections Division – Chapter 165

### Division 01

### PROCEDURAL RULES

This version of the HB 4024 (2024) draft rules highlight the proposed revisions but do not contain administrative rule history.

A version of these draft rules with tracked changes is available at [OregonVotes.gov](https://OregonVotes.gov).

Provide feedback using this version of this draft rules.

These specific Oregon Administrative Rules (OAR) are omitted because no changes are being made as a result of HB 4024 (2024):

- 165-001-0000 Notice of Proposed Rule
- 165-001-0005 Model Rules of Procedure
- 165-001-0090 HAVA Complaint Procedure

HB 4024 Implementation Draft

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Reference the OAR number or document, page number, and line number when feedback applies to specific sections

**165-001-0009 Definitions**

Unless the context requires otherwise, the following definitions apply to this Division:

(1) "Agency" means Secretary of State, Elections Division and any employee thereof.

(2) "Charging document" means any document issued by the Secretary of State, Elections Division stating that any person or government agency has violated the laws or rules within this Agency's jurisdiction.

(3) "Complainant" is an individual who has filed a complaint with the Agency and has been notified of the outcome of that investigation of an alleged violation of an election law or rule for which a civil penalty of greater than \$10,000 may be imposed.

(4) "Investigation" refers to the Agency's fact finding, inquiry, and enforcement activity following a timely complaint alleging an election law violation. An Agency decision declining to investigate is not an investigation for purposes of this rule.

(5) "Outcome of that investigation" means one of the two following determinations made by the Agency following an investigation:

(a) The Agency finds no violation of an election law or rule and closes the investigation;  
or

(b) The Agency issues a document indicating their intent to issue a charging document that proposes to impose a civil penalty for a violation of an election law or rule.

(6) "Person" has the same definition provided in ORS 260.005(16).

(7) "Respondent" is an individual against whom a charging document has been issued.

**Statutory/Other Authority:** ORS 246.150 & HB 4024 (2024)

**Statutes/Other Implemented:** ORS 260.232, 260.995 & HB 4024 (2024)

**165-001-0010 Access to the Contested Case Process**

(1) Contested case rules apply to the Agency and to:

(a) The Respondent as defined in OAR 165-001-0009(7)

(b) ) The Complainant as defined in OAR 165-001-0009(3).

(2) The Agency may designate, in writing, employees of the agency or any other persons to conduct hearings under these rules. OAR 165-001-0036 provides additional information regarding employee representation at contested case hearings.

(3) The person or persons described in section (1) of this rule is the party in the contested case hearing. Other persons may attend the hearing and may appear as witnesses if called by a party or the Agency, but will not be considered to be parties in the contested case.

**Statutory/Other Authority:** ORS 183.335, 183.360, 183.413, 246.150, 260.232, 260.345, 260.995 & HB 4024 (2024)

**Statutes/Other Implemented:** ORS 260.232, 260.345, 260.995 & HB 4024 (2024)

**165-001-0015 Notice of Opportunity for Hearing - Respondent**

When the Agency finds a violation of an election law and proposes to impose a civil penalty under ORS 260.232, ORS 260.345, or ORS 260.995, the Agency shall cause a notice to be served on the Respondent(s) subject to the penalty. For a violation under ORS 260.232 the notice shall be served by electronic or first class mail; for a violation under ORS 260.345 or ORS 260.995 the notice shall be served by certified mail. The notice shall include:

(1) A statement of the Respondent's right to a hearing before an Administrative Law Judge with the Office of Administrative Hearings.

(2) A statement that if the Respondent desires a hearing, the agency must be notified within the number of days provided in ORS 260.232(3)(a), ORS 260.345 or 260.995(4)(a) whichever is applicable.

(3) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) A reference to the particular sections of the statutes and rules involved.

(5) A short and plain statement of the matters asserted or charged as a violation.

(6) A statement of the amount of penalty that may be imposed.

(7) A statement that the Respondent may be represented by counsel at the hearing.

(8) If the Respondent is a government agency, corporation or an unincorporated association, that person must be represented by an attorney licensed in Oregon.

(9) If the Respondent is a political committee subject to a civil penalty under ORS 260.995, that person may be represented by any officer identified in the most recent statement of organization filed with the filing officer. "Officer" means any person identified as a director on the most recent statement of organization for a political committee.

(10) A statement that the record of the proceeding to date, including the agency file or files on the subject of the contested case, automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

(11) A statement that unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

**Statutory/Other Authority:** ORS 183.090, 183.470, 246.150, 260.345 & HB 4024 (2024)

**Statutes/Other Implemented:** ORS 183.341, 183.470, 260.232, 260.345, 260.995 & HB 4024 (2024)

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1 **165-001-0016** Requesting a Hearing - Respondent

2 (1) If a Respondent wishes to request a hearing to contest the allegations in the  
3 charging document, they must submit to the Agency a signed Hearing Request Form  
4 and an “answer,” to the allegations in the charging document not later than the deadline  
5 to request a hearing stated in the charging document.

6 (a) The answer must include an admission or denial of each factual matter alleged in  
7 the charging document and a statement of each relevant defense to the allegations,  
8 including any relevant mitigating circumstance that may apply and indicate specifically  
9 what facts or transactions the mitigating circumstance applies to.

10 (b) A general denial is not sufficient to constitute an answer.

11 (c) Any evidence of a mitigating circumstance or other relevant evidence may be  
12 submitted with the answer as exhibits.

13 (2) An answer not including the information required by this rule may be disregarded  
14 and a notice of default may be issued in accordance with OAR 165-001-0025 as if no  
15 answer had been filed.

16 (3) Except for good cause shown to the administrative law judge, factual matters alleged  
17 in the charging document and not denied in the answer will be deemed admitted by the  
18 Respondent .

19 (4) The failure of the Respondent to raise a mitigating circumstance in the answer is a  
20 waiver of such mitigating circumstance.

21 (5) The Respondent bears the burden of proof to show that all or part of the penalty  
22 should be mitigated based on a mitigating circumstance.

23 (6) Any new facts or defenses alleged in the answer will be deemed denied by the  
24 Agency.

25 (7) Evidence will not be taken at the contested case hearing on any factual or legal  
26 issue not raised in the charging document or the answer as filed.

27 (8) The Respondent must select one of the following options when requesting a hearing.  
28 Each option has specific requirements and timelines. If no option is selected on the  
29 form, the hearing will be held by telephone.

30 (a) Personal Appearance. OAR 165-001-0047 provides additional information regarding  
31 personal appearance hearings.

32 (b) Telephone. OAR 165-001-0047 provides additional information regarding telephone  
33 hearings.

- 34 (c) Notarized Testimony in Lieu of Hearing. OAR 165-001-0046 provides additional  
35 information regarding notarized testimony in lieu of a hearing.
- 36 (A) When a Respondent selects this option, the complete notarized testimony, including  
37 all exhibits, must be included with the hearing request and be complete and submitted  
38 before the hearing deadline.
- 39 (B) The hearing request form and testimony must be notarized by a commissioned  
40 Notary Public.
- 41 (C) If a Respondent submits notarized testimony in lieu of requesting a personal  
42 appearance or telephone hearing, the person is waiving their right to a personal  
43 appearance or telephone hearing.
- 44 (9) Form SEL 850 is the Hearing Request Form, Campaign Finance Transactions **that**  
45 **must** be used to request **a personal appearance hearing** or telephone hearing, or submit  
46 notarized testimony **in lieu of a hearing** to contest campaign finance transaction  
47 violations.
- 48 (10) Form SEL 851 is the Hearing Request Form, Other Campaign Finance Violations  
49 **that must** be used to request **a personal appearance hearing** or telephone hearing, or  
50 submit notarized testimony **in lieu of a hearing** to contest campaign finance violations,  
51 other than those violations relating to late or insufficient campaign finance transactions.
- 52 (11) Form SEL 852 is the Hearing Request Form, Non-Campaign Finance Violations,  
53 **that must** be used to request **a personal appearance hearing** or telephone hearing, or  
54 submit notarized testimony **in lieu of a hearing**, to contest non-campaign finance  
55 violations.
- 56 (12) Form SEL 853 is the Hearing Request Form, Disclosure Violations, that must be  
57 used to request an in-person or telephone hearing, or submit notarized testimony, to  
58 contest violations of ORS 260.266.
- 59 **Statutory/Other Authority:** ORS 246.150, **260.345 & HB 4024 (2024)**  
60 **Statutes/Other Implemented:** ORS 260.232, **260.345, 260.995 & HB 4024 (2024)**

**165-001-0017 Notice of Opportunity for Hearing - Complainant**

The Secretary of State shall cause a notice to be served on the Complainant that states the outcome of the investigation into Complainant's complaint alleging a violation of an election law or rule for which a civil penalty of greater than \$10,000 may be imposed.

The notice shall be served by electronic or first class mail. The notice shall include:

(1) A statement of the Complainant right to a hearing before an Administrative Law Judge with the Office of Administrative Hearings.

(2) A statement that if the Complainant desires a hearing, the agency must be notified within 20 days.

(3) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) A reference to the particular sections of the statutes and rules involved.

(5) A short and plain statement of the matters alleged by the Complainant and the outcome of the investigation into Complainant's complaint alleging a violation of an election law or rule.

(6) A statement that the Complainant may be represented by counsel at the hearing.

(7) A statement that the record of the proceeding to date, including the agency file or files on the subject of the contested case, automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

(8) A statement that unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

**Statutory/Other Authority:** ORS 183.090, 183.470, 246.150, 260.345 & HB 4024 (2024)

**Statutes/Other Implemented:** ORS 183.341, 183.470, 260.345 & HB 4024 (2024)



**165-001-0018 Requesting a Hearing - Complainant**

(1) If a Complainant wishes to request a hearing to contest the outcome of the investigation described in the notice sent to Complainant pursuant to OAR 165-001-0017, the Complainant must submit to the Agency a signed Hearing Request Form and a description of the errors the Elections Division made in the outcome of the investigation.

(a) The description must include one or more assertions of error, supported by evidence and indicate specifically what facts substantiate each alleged error.

(b) A general dissatisfaction with the outcome is not sufficient to constitute an error.

(2) An answer not including the information required by this rule may be disregarded and a notice of default may be issued in accordance with OAR 165-001-0025 as if no request for hearing request had been filed.

(3) Except for good cause shown to the administrative law judge, factual matters alleged in the closing letter and not refuted in the request for hearing will be deemed admitted by the Complainant.

(4) The failure of the Complainant to raise a potential error in the request for hearing is a waiver of the right to a hearing or other process for that potential error.

(5) The Complainant bears the burden of proof to show that the Secretary erred in the outcome of their investigation.

(6) The Complainant may not introduce new facts or allegations in a hearing request. If a Complainant has new facts, allegations, or evidence that was not previously considered prior to the Elections Division notice, they should submit a new complaint. OAR 165-001-0095 provides additional information regarding complaint requirements.

(7) Evidence will not be taken at the contested case hearing on any factual or legal issue not raised in the original allegation or the description from paragraph 1(a) of this rule as filed.

(8) The Complainant must select one of the following options when requesting a hearing. Each option has specific requirements and timelines. If no choice is indicated on the form, the hearing will be held by telephone.

(a) Personal Appearance. OAR 165-001-0047 provides additional information regarding personal appearance hearings.

(b) Telephone. OAR 165-001-0047 provides additional information regarding telephone hearings.

(9) SEL 854 is the Hearing Request Form for Complainants, that must be used to request a personal appearance or telephone hearing to contest the outcome of an Agency investigation under ORS 260.345.

**Statutory/Other Authority:** ORS 246.150, 260.345 & HB 4024 (2024)

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38 **Statutes/Other Implemented: ORS 260.345 & HB 4024 (2024)**

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**165-001-0025 Orders When No Hearing Requested, Hearing is Cancelled, or Failure to Appear at Hearing**

(1) When a party has been given an opportunity to request a hearing and fails to request a hearing in writing within the specified time, or having requested a hearing fails to appear at the specified time and place, the agency shall, subject to section (2) of this rule, enter an order by default which supports the agency action.

(2) The time provided by statute to request a hearing under ORS 260.995 is calculated from the delivery date indicated on the certified letter's postal confirmation. If the certified letter is refused or left unclaimed at the post office, the time shall be calculated from the date the post office indicates it has given first notice of a certified letter. If the certified card is not returned to the Secretary of State by the United States Postal Service (USPS), the Secretary shall use the date recorded on the official USPS website utilizing the Track and Confirm delivery service.

(3) The time provided by statute **or rule** to request a hearing under ORS 260.232 **or ORS 260.345** is 20 calendar days after the service date on the charging document.

(4) An order adverse to a party may be issued on default only if the agency record demonstrates a prima facie case justifying the order. The Administrative Law Judge will declare a party to be in default if the party which requested the hearing does not appear within 15 minutes of the time set for the hearing, unless the party gives notice of a reason for the inability to appear at the designated time and requests and receives a continuance. A continuance shall be granted only if the reason for the inability to appear is beyond the reasonable control of the party.

(5) The prima facie record upon default may be made at a scheduled hearing on the matter, or, if the notice of intended action states that the order will be issued or become effective upon the failure of the party to timely request a hearing, when the order is issued.

(6) The record may consist of oral (transcribed, recorded, or reported) or written evidence or a combination of oral and written evidence. When the record is made at the time the notice or order is issued, the agency file may be designated as the record. In all cases, the record must contain substantial evidence to support the findings of fact.

(7) When the Administrative Law Judge has set a specified time and place for a hearing and the party subsequently notifies the agency or the Administrative Law Judge assigned to the case that the party will not appear at such specified time and place, the **A**gency may cancel the hearing and follow the procedure described in subsections (2), (3) and (4) of this rule.

(8) The deadline to issue a Final Order by Default if there is no hearing request, the hearing is cancelled or the party fails to appear at the hearing is not later than the 90th day after the deadline to request a hearing.

(9) When a party requests a hearing after the time specified by the Agency, but before entry of a final order by default, or, if a final order by default is entered, on or before 30 calendar days after entry of the order, the agency may accept the late request only if the cause for failure to timely request the hearing was beyond the reasonable control of the party. In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit and may conduct such further inquiry, including holding a hearing, that it deems appropriate. The agency shall enter an order granting or denying the request.

(10) When a party requests a hearing after entry of a default order, the party must file the request within a reasonable time. If the request is received more than 30 days after the agency mailed the default order to the party or the party's attorney (based on the service date of the order), it is presumed that the request is not timely. The request shall state why the party should be relieved of the default order. If the request is allowed by the agency, it shall enter an order granting the request and schedule the hearing in due course. If the request is denied, the agency shall enter an order setting forth its reasons for the denial.

(11) The agency shall notify a defaulting party of the entry of a default order by mailing a copy of the order as required by ORS 183.470.

(12) Notwithstanding the provisions of this rule relating to late requests for a hearing, no hearing may be held if the timing of the request would cause the agency to miss the statutory deadlines established for the conduct of hearings in ORS 260.232(4), 260.345, or 260.995(6).

**Statutory/Other Authority:** ORS 183.090, 183.470, 246.150, 260.232, 260.345, & 260.995, & HB 4024 (2024)

**Statutes/Other Implemented:** ORS 183.470, 260.232, 260.345 & 260.995 & HB 4024 (2024)

**165-001-0035 Roles and Responsibilities**

(1) The contested case hearing shall be conducted by and under the control of the administrative law judge of the Office of Administrative Hearings that is assigned to the case.

(2) If the administrative law judge or any decision maker has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that officer shall comply with the requirements of ORS Chapter 244 (e.g. ORS 244.120 and 244.130).

(3) The hearing shall be conducted, subject to the discretion of the administrative law judge, to include the following:

(a) The statement and evidence of the agency in support of its action;

(b) The statement and evidence of Respondent or Complainant, as applicable.

(c) Any rebuttal evidence;

(d) Any closing arguments.

(4) The administrative law judge, the agency, and Respondent or Complainant, as applicable, shall have the right to question witnesses.

(5) The hearing may be continued with recesses as determined by the administrative law judge.

(6) The administrative law judge may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(7) Exhibits shall be marked and maintained by the administrative law judge as part of the record of the proceedings.

(8) If the administrative law judge receives any written or oral ex parte communication on a fact in issue during the contested case proceeding, that person shall notify all parties and otherwise comply with the requirements of OAR 165-001-0045.

**Statutory/Other Authority:** ORS 246.150, 260.232, 260.345, 260.995 & HB 4024 (2024)

**Statutes/Other Implemented:** ORS 260.232, 260.345, 260.995 & HB 4024 (2024)

## 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, 260.112, 260.118, 260.275, 260.281, [ORS HB 4024 additions] and 260.345.

(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 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,

33 the presiding officer will provide reasonable opportunity for the employee representative  
34 to consult legal counsel and permit legal counsel to file written legal argument within a  
35 reasonable time after the conclusion of the hearing.

36 **Statutory/Other Authority:** ORS 246.150 & HB 4024 (2024)

37 **Statutes/Other Implemented:** ORS 260.232, 260.995, 260.345 & HB 4024 (2024)

38

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**165-001-0040** Evidentiary Rules

(1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(3) All offered evidence, not objected to, will be received by the administrative law judge subject to the administrative law judge's power to exclude irrelevant, immaterial or unduly repetitious matter.

(4) Evidence objected to may be received by the administrative law judge. If the administrative law judge does not rule on its admissibility at the hearing, the administrative law judge shall do so either on the record before a proposed order is issued or in the proposed order.

(5) The administrative law judge shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the agency or court to determine whether the evidence was properly excluded. The administrative law judge shall have discretion to decide whether the offer of proof is to be oral or written and at what stage in the proceeding it will be made. The administrative law judge may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer.

(6) Pursuant to OAR 165-001-0016 and OAR 165-001-0018, evidence may not be taken at the contested case hearing on any factual or legal issue not raised in the charging document or the answer.

**Statutory/Other Authority:** ORS 246.150, 260.232 & 260.995 & HB 4024 (2024)

**Statutes/Other Implemented:** ORS 183.450, 183.470, 260.232, 260.345, 260.995 & HB 4024 (2024)



1 **165-001-0045 Ex Parte Communications**

2 (1) An ex parte communication is:

3 (a) An oral or written communication;

4 (b) By a party, a party's representative or legal advisor, any other person who has a  
5 direct or indirect interest in the outcome of the proceeding, any other person with  
6 personal knowledge of the facts relevant to the proceeding, or any officer, employee or  
7 agent of the Agency;

8 (c) That relates to a legal or factual issue in the contested case proceeding;

9 (d) Made directly or indirectly to the administrative law judge;

10 (e) While the contested case proceeding is pending;

11 (f) That is made without notice and opportunity for the agency and all parties to  
12 participate in the communication.

13 (2) If an administrative law judge receives an ex parte communication during the  
14 pendency of the proceeding, the administrative law judge shall place in the record:

15 (a) The name of each individual from whom the administrative law judge received an ex  
16 parte communication;

17 (b) A copy of any ex parte written communication received by the administrative law  
18 judge;

19 (c) A memorandum reflecting the substance of any ex parte oral communication made  
20 to the administrative law judge;

21 (d) A copy of any written response made by the administrative law judge to any ex parte  
22 oral or written communication; and

23 (e) A memorandum reflecting the substance of any oral response made by the  
24 administrative law judge to any ex parte oral or written communication.

25 (3) The provisions of this rule do not apply to:

26 (a) Communications made to an administrative law judge by other administrative law  
27 judges;

28 (b) Communications made to an administrative law judge by any person employed by  
29 the Office of Administrative Hearings to assist the administrative law judge.

- 30 **Statutory/Other Authority:** ORS 246.150, 260.232, 260.345, 260.995 & HB 4024  
31 (2024)  
32 **Statutes/Other Implemented:** ORS 260.232, 260.345, 260.995 & HB 4024 (2024)

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**165-001-0046 Contested Case - Notarized Testimony in lieu of Hearing - Respondent**  
**(formerly 165-001-0034)**

(1) After the Respondent submits both a completed hearing request form selecting notarized testimony in lieu of a hearing as well as the required notarized testimony, the Agency may submit notarized testimony and any exhibits when referring the hearing request to the Office of Administrative Hearings (OAH). If the Agency submits notarized testimony, it will be transmitted via email to the Respondent and via the OAH hearing portal to OAH. The Agency may mail its notarized testimony to the Respondent's last known address if the Respondent's email address is unknown or the e-mail is returned as undeliverable.

(2) The Respondent may, but is not required to, respond to the Agency testimony by submitting rebuttal notarized testimony.

(a) Rebuttal notarized testimony is limited to issues raised in the original notarized testimony and the Agency's testimony.

(b) Rebuttal notarized testimony must be notarized by a commissioned Notary Public.

(c) The rebuttal notarized testimony must be received by the Agency not later than five business days from the date of service of the Agency's testimony (the date the testimony was e-mailed or mailed). The rebuttal testimony may be hand-delivered, mailed, faxed or attached to an email and sent to orestar-support.sos@sos.oregon.gov.

(3) The notarized testimony hearing record is deemed closed the day after the deadline for the person to submit rebuttal testimony.

(4) This rule does not apply to cases where the Respondent has requested a personal appearance or telephone hearing but elects to testify in that hearing using notarized testimony. OAR 165-001-0047 provides additional information regarding the use of notarized testimony when an in-person or telephone hearing has been requested.

**Statutory/Other Authority:** ORS 246.150 & HB 4024 (2024)

**Statutes/Other Implemented:** ORS 260.232, 260.995 & HB 4024 (2024)

**165-001-0047 Contested Case – Personal Appearance and Telephone Hearings**  
**(formerly 165-001-0080)**

(1) The administrative law judge will hold a hearing by telephone unless the party requesting the hearing specifically requests a personal appearance hearing. If the party requests a personal appearance hearing, the hearing shall be held in Salem at the Office of Administrative Hearings. Nothing in this rule precludes the agency from allowing some parties or witnesses to attend by telephone while others attend in person.

(2) All hearings under this rule shall be held not later than 45 days after the deadline for the party to request a hearing. However, if requested by the party, a hearing under this rule shall be held not later than 60 days after the deadline for the party to request a hearing.

(3) The administrative law judge shall make an audio or stenographic record of any telephone hearing.

(4) Not less than 5 business days prior to the commencement of a hearing, each party, including the agency, must deliver copies of the exhibits it intends to offer into evidence at the hearing. The exhibits must be delivered to the administrative law judge, all parties and the agency. For purposes of this rule, delivery may be accomplished by any of the following means, or by other means of a similar nature: hand delivery, deposit into first class or certified mail, facsimile, email or professional delivery service.

(5) For a hearing held under ORS 260.232, ORS 260.345 or 260.995, a Respondent requesting the hearing does not need to appear in person, but instead may submit written testimony and other evidence, sworn to before a notary public, to the Secretary of State for entry in the hearing record. Such documents must be received by the Secretary of State not later than three business days prior to the hearing as provided by ORS 260.232(6), and 260.995(5). This section of the rule does not apply to Complainants.

(a) The Agency may also submit notarized testimony. The Agency notarized testimony must be received by the Office of Administrative Hearings not later than 5:00 p.m. on the scheduled date of the hearing. If the Agency does not submit notarized testimony, the Agency exhibits become part of the case file and may establish the basis for liability.

(b) The Respondent may, but is not required to, respond to the Agency notarized testimony by submitting rebuttal notarized testimony.

(A) Rebuttal notarized testimony is limited to issues raised in the original notarized testimony and the Agency's testimony.

(B) Rebuttal notarized testimony must be notarized by a commissioned Notary Public.

(C) The rebuttal notarized testimony must be received by the Agency not later than five business days from the date of service of the Agency's testimony (the date the testimony was e-mailed or mailed). The rebuttal testimony may be hand-delivered, mailed, faxed or attached to an email and sent to orestar-support.sos@oregon.gov.

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(c) When the Respondent elects to provide notarized testimony rather than appear at a personal appearance or telephone hearing, the hearing record is deemed closed the day after the deadline for the person to submit rebuttal testimony.

(6) Nothing in this rule precludes any party or the agency from seeking to introduce documentary evidence in addition to evidence described in subsection (4) during the hearing. The administrative law judge shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the agency and to the other parties, the hearing may be continued upon the request of any party or the agency for sufficient time to allow the party or the agency to obtain and review the evidence.

(7) The agency will give primary consideration to accommodate the needs of persons that are disabled so that they are not disadvantaged due to their disability.

(8) As used in this rule, "telephone" means any two-way or multi-party electronic communication device, including video conferencing.

(9) The Administrative Law Judge will determine when the hearing record is complete and the hearing is adjourned.

**Statutory/Other Authority:** ORS 260 & HB 4024 (2024)

**Statutes/Other Implemented:** ORS 260.232, 260.995 & HB 4024 (2024)

**165-001-0050** Proposed Orders in Contested Cases, Filing of Exceptions, Argument, and Adoption of Order – **Respondent**

For contested cases under ORS 260.232, ORS 260.345 and ORS 260.995:

(1) The administrative law judge shall prepare a proposed order and serve the proposed order on the agency and each **Respondent**. The proposed order shall be served not later than 30 calendar days after the hearing is adjourned **under OAR 165-001-0047 or closed under OAR 165-001-0046(3)**. The proposed order shall also include information about when and where written exceptions to the proposed order must be filed to be considered by the agency.

(2) The exceptions must be received by the Elections Division not later than 30 calendar days after the service date of the proposed order. The date of service is the day the proposed order is mailed, not the date the **Respondent** receives the proposed order.

(3) If the administrative law judge's proposed order recommended a decision favorable to a **Respondent** and the agency intends to reject that recommendation and issue an order adverse to that **Respondent**, the agency shall issue an amended proposed order. When the agency serves an amended proposed order on the **Respondent**, the agency shall, at the same time notify the **Respondent** when and where written exceptions for the amended order must be filed to be considered by the agency.

(4) Written exceptions filed under (2) or (3) may be scanned and attached to an email and sent to orestar-support.sos@sos.oregon.gov, transmitted by fax (503-373-7414), mailed or hand-delivered to 255 Capitol St NE, Ste **126**, Salem OR 97310.

(5) The agency decision maker, after considering any of the written exceptions may adopt the proposed order, amended proposed order or prepare a new order.

**(6) The agency decision maker, after considering any of the written exceptions, will issue the Final Order as described in OAR 165-001-0055.**

**Statutory/Other Authority:** ORS 183.090, 183.470, 246.150, 260.232, 260.995 & HB 4024 (2024)

**Statutes/Other Implemented:** ORS 183.470, 260.232, 260.995 & HB 4024 (2024)

**165-001-0051** Proposed Orders in Contested Cases, Filing of Exceptions, Argument, and Adoption of Order - Complainant

For contested cases under ORS 260.345(10):

(1) The administrative law judge shall prepare a proposed order and serve the proposed order on the agency and each Complainant. The proposed order shall include findings of fact and conclusions of law related only to whether the outcome of the investigation as defined in OAR 165-001-0009(5) made by the Agency is correct or incorrect. The proposed order shall not include findings of fact and conclusions of law related to any Respondent against whom the Agency may assess a penalty following a hearing conducted under ORS 260.232, ORS 260.345 or ORS 250.995.

(2) The proposed order shall be served not later than 30 calendar days after the hearing is adjourned or closed. The proposed order shall also include information about when and where written exceptions to the proposed order must be filed to be considered by the Office of Administrative Hearings.

(3) The exceptions must be received by the Administrative Law Judge not later than 30 calendar days after the service date of the proposed order. The date of service is the day the proposed order is mailed, not the date the Complainant receives the proposed order.

(4) The Administrative Law Judge, after considering any of the written exceptions from both the Complainant and agency, will issue the Final Order as described in OAR 165-001-0055

**Statutory/Other Authority:** ORS 183.090, 183.470, 246.150, 260.232, 260.995 & HB 4024 (2024)

**Statutes/Other Implemented:** ORS 183.470, 260.232, 260.995 & HB 4024 (2024)



**165-001-0055 Final Orders**

(1) Final orders on contested cases shall be in writing and shall include the following:

(a) The case caption.

(b) The name of the administrative law judge(s), the appearance of the parties and identity of witnesses.

(c) A statement of the issues.

(d) References to specific statutes or rules at issue.

(e) Rulings on admissibility of offered evidence when the rulings are not set forth in the record.

(f) Findings as to each issue of fact and as to each ultimate fact required to support the order, along with a statement of the underlying facts supporting each finding.

(g) Conclusion(s) of law based on the findings of fact and applicable law.

(h) An explanation of the reasoning that leads from the findings of fact to the legal conclusion(s)

(i) An order stating the action taken by the agency as a result of the facts found and the legal conclusions arising therefrom.

(j) A citation of the statutes under which the order may be appealed.

(k) The date of service of the order on the party shall be specified in writing and be part of or attached to the order on file with the agency.

(l) The final order shall be served on each party and, if the party is represented, on the party's attorney.

(2) If the agency modifies the proposed order issued by the administrative law judge in any substantial manner, the agency must identify the modifications and explain to the parties why the agency made the modifications. For purposes of this provision, an agency modifies a proposed order in a "substantial manner" when the effect of the modification is to change the outcome or the basis for the order or to change a finding of fact.

(3) The deadline to issue a final order is not later than 90 days after the hearing record is closed.

- 31 **Statutory/Other Authority:** ORS 183.090, 183.470, 246.150, 260.232, 260.995 & HB  
32 4024 (2024)  
33 **Statutes/Other Implemented:** ORS 183.470, 260.232, 260.995 & HB 4024 (2024)

HB 4024 Implementation Draft

**165-001-0095** Complaint Requirements

(1) Any complaint filed pursuant to ORS 260.205 or ORS 260.345 must be signed by an elector of the State of Oregon.

(2) A complaint must be supported by evidence that supports the allegation that a violation of ORS chapter 246 through 260 or related administrative rules has occurred and that the alleged violation occurred within the relevant statutes of limitations. Failure to include sufficient evidence may result in the Agency's declination to investigate the allegations made.

(3) A complaint filed pursuant to ORS 260.345 which is filed with an elections filing officer other than the Agency shall be delivered by the filing officer to the Agency within one business day.

(4) The complaint may be delivered through the Agency's online form or by electronic mail to [investigations.sos@sos.oregon.gov](mailto:investigations.sos@sos.oregon.gov) by facsimile to 503-373-7414 or by mail or personal delivery to 255 Capitol Street NE, Suite 126, Salem, OR 97310.

**Statutory/Other Authority:** ORS 260.345, 246.150 & HB 4024 (2024)

**Statutes/Other Implemented:** ORS 260.345, 246.232, 260.205, 260.995 & HB 4024 (2024)