

DIVISION 3 CONTESTED CASE PROCEDURES

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00

845-003-0200

Statement of Purpose

(1) The purpose of these rules is to carry out the statutory policies contained in ORS 183.413 to 183.470, to give all persons involved in a contested case clear guidelines to follow and an understanding of what is expected of participants, and to provide for thorough and timely hearings.

(2) In an effort to provide timely hearings, these rules establish time limits which will be strictly followed if good cause is not shown.

(3) These rules apply to all contested case proceedings pending with or received by the Commission on or after the effective date.

Stat. Auth.: ORS 183.341(2), ORS 471.730(5) & (6); ORS 472.060(1) & (2)(d).

Stats. Implemented: ORS 183.341(2), ORS 471.730(5) & (6), ORS 472.060(1) & (2)(d).

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00

845-003-0210

Model Rules of Procedure

The Attorney General's Hearing Officer Panel Rules, effective January 1, 2000, and subsequent amendments, are hereby adopted by reference as permanent rules of procedure for contested case hearings conducted on behalf of the Liquor Control Commission, except to the extent supplemented in this division or any other division of chapter 845 of the Oregon Administrative Rules. The Attorney General's Hearing Officer Panel Rules are set forth at OAR 137-003-0501 to 137-003-0700.

Stat. Auth.: ORS 183.341(2), ORS 471.730(5) & (6); ORS 472.060(1) & (2)(d).

Stats. Implemented: ORS 183.341(1) & (2), OL 1999, Ch. 849.

845-003-0220

Definitions

The following definitions apply to these rules, unless the context requires otherwise:

(1) "Charging Document" means any document issued by the Commission stating that any person or entity has violated the laws over which the Commission has jurisdiction; any document proposing to act upon an application for a permit, license, or certification, or upon an existing permit, license, or certification; or any document alleging a violation of a term or condition of a retail sales agent agreement.

1) "Commission" means the Oregon Liquor Control Commission and any employee thereof, but for purposes of these rules does not refer to the Commissioners.

2) "Commissioners" means a quorum of duly appointed Commissioners at a meeting called for the transaction of any business, the performance of any duty, or the exercise of any power of the Oregon Liquor Control Commission.

3) "Discovery" means the prehearing process that allows a participant to gain access to relevant information and evidence in the possession, knowledge, or control of another participant or the Commission.

(5) "Good cause" means, unless otherwise specifically stated, that a participant failed to perform a required act due to an excusable mistake or circumstance over which the participant had no control. The failure to perform a required act due to the press of business does not constitute good cause. Good cause does not include a lack of knowledge of the law, including these rules.

(6) "Participant" means any party involved in a particular contested case proceeding or the Commission.

(7) "Party" means:

(a) Any person, entity, government agency or body upon whom a charging

document has been served;

(b) Any person, entity, government agency or body that has been granted party or limited party status.

(8) “Summary of the Case” means a prehearing discovery document ordered by the hearing officer pursuant to OAR 845-003-0460.

Stat. Auth.: ORS 183.341(2), ORS 471.730(5) & (6); ORS 472.060(1) & (2)(d)

Stats. Implemented: ORS 183.310 & ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00

845-003-0270

Request for a Contested Case Hearing and Response to Charging Document

(1) Any party who wants to contest a charging document shall file a response (“answer”) to the charging document and request a contested case hearing. The answer and request for hearing must be in writing and filed with the Administrative Process Division within the time limit established in the charging document. Unless the intended action of the Commission is a suspension or nonrenewal of a license on an emergency basis under ORS 183.430(2), the time limit for response to violation matters is 30 days after mailing of the charging document, for licensing or certification application denials, 60 days, 20 days for neighborhood livability cases, and for service permit refusals, 15 days. In agency cases, if the retail sales agent agreement between the Commission and the agent provides for a hearing, the agent must file the request within the time period provided in the agreement.

(2) The answer must specify what statements in the charging document the party denies and what defense or defenses the party will rely upon. The answer must include an admission or denial of each factual matter alleged in the charging document and a statement of each relevant defense to the allegations. A general denial is not sufficient to constitute an answer. Except in service permit denial cases, where the answer does not include the information required by this rule, or where no answer is filed, the

presiding officer shall convene a prehearing conference to obtain the required information.

(3) Evidence shall not be taken at the contested case hearing on any factual or legal issue not raised in the charging document or answer (or in a prehearing conference convened to supplement the answer), except for good cause shown to the hearing officer, or pursuant to amendment of the charging document.

Stat. Auth.: ORS 183.341(2), ORS 471.730(5) & (6); ORS 472.060(1) & (2)(d)

Stats. Implemented: ORS 183.090, 183.341(2), 183.430(2), 183.435, 471.312(1) & 471.380(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 8-1999, f. 6-9-99, cert. ef. 7-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

845-003-0331

Employee Representation at Contested Case Hearings

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

(2) A Commission employee may represent the Commission in contested case hearings involving violations, license or service permit applications, alcohol server education provider and instructor certification applications, and liquor store agent contract violations or disputes.

(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 Commission 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 Liquor Control Commission to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to the Liquor Control Commission; and

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

(5) When an employee represents the Commission 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.

Stat. Auth.: ORS 183, ORS 183.341(2), ORS 183.415(4), 183.450(3) & 471.030

Stats. Implemented: ORS 183.450(7) & (8)

Hist.: OLCC 6-2002(Temp), f. 5-6-02, cert. ef. 5-7-02 thru 11-2-02; OLCC 13-2002, f. 10-25-02 cert. ef. 11-3-02

845-003-0340

Interpreters

(1) Notwithstanding OAR 137-003-

0590(3)(c)(A) and (B), when a party or a witness in a contested case proceeding, who is an individual with a disability, or who by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings, timely requests an assistive communication device or an interpreter, the agency shall appoint and pay the fees and expenses of a qualified interpreter or assistive communication device whenever it is necessary to interpret the proceedings.

(2) The administrative law judge shall explain to the person with a disability or to the non-English speaking party that a written decision or order will be issued in English, and that the party may contact the interpreter for an oral translation of the decision, or contact the agency to arrange for use of an assistive communication device, and that the translation or use of the assistive communication device itself is at no cost to the party. The interpreter shall provide to the administrative law judge and the party the interpreter's business telephone number and address. The telephone number and address shall be attached to the order mailed to the party. A copy of the order shall also be mailed to the interpreter for use in translation. The agency will provide to the administrative law judge and the party the name, phone number and address of the contact person at the agency who can arrange for an assistive communication device.

(3) For purposes of this rule:

(a) An "assistive communication device" means any equipment designed to facilitate communication by an individual with a disability;

(b) An "individual with a disability" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment;

(c) A "non-English speaking" person means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the

proceedings;

(d) A “qualified interpreter” means:

(A) For an individual with a disability, a person readily able to communicate with the individual with a disability, interpret the proceedings and accurately repeat and interpret the statements of the individual with a disability;

(B) For a non-English speaking person, a person readily able to communicate with the non-English speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. “Qualified interpreter” does not include a person who is unable to interpret the dialect, slang or specialized vocabulary used by the party or witness.

Stat. Auth.: ORS 183.341(2), 471.730(5) & (6);

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 5-2006, f. 4-18-06, cert. ef. 5-1-06

845-003-0460

Summary of the Case

(1) Prior to any contested case hearing, the hearing officer may issue a discovery order directing the participants to prepare a summary of the case containing any or all of the following:

a) A list of all persons to be called as witnesses, including expert witnesses, at the hearing, except that impeachment or rebuttal witnesses need not be included on the witness list; in the case of an expert witness, the qualifications of the expert and the substance of the facts and opinions to which the expert

is expected to testify;

b) Identification and description of any document or other physical evidence to be offered into evidence at the hearing, together with a copy of any such document, except that evidence offered solely for impeachment or rebuttal need not be identified or furnished;

(c) Statement of the defense(s) to the matters charged;

(d) Statement of any agreed or stipulated facts;

(e) Statement of actions or penalties proposed by the Commission and the reasons for the proposal(s);

(f) Statement, where appropriate, of any applicable agency policies together with, in the discretion of the Commission, any supporting documents or information upon which the policies are based.

(2) Each participant shall file a summary of the case with the hearing officer and provide a copy to the other participant(s) by the date established by the hearing officer.

(3) Following the filing and exchange of the summary of the case and before the start of the hearing, participants shall immediately provide to the other participants and the hearing officer any newly discovered matter, such as a document, that is within the scope of the discovery order.

Stat. Auth.: ORS 183.341(2), ORS 471.730(5) & (6); ORS 472.060(1) & (2)(d)

Stats. Implemented: ORS 183.341(2), ORS 183.425(2), OL 1999, Ch. 849.

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00

845-003-0590

Exceptions

(1) Only parties and limited parties may file exceptions to a proposed order. Commission staff may file written comments on the proposed order.

(2) Exceptions and comments must be in writing and received by the Administrator of the Commission within 15 days of the mailing date of the proposed order to be considered by the

Commissioners. If an interpreter is required to translate a proposed order for one participant, all participants shall have an additional 10 days to file exceptions or comments to the proposed order.

(3) The Administrator may grant a participant's written request to extend the period to file exceptions or comments for good cause shown. The request must be received within 15 days of the mailing date of the proposed order.

(4) Oral argument to the Commissioners on written exceptions or comments will be taken at a regularly scheduled meeting of the Commissioners. The participants shall be notified by the Commission of the date, time, and place of the meeting where such argument will be heard.

Stat. Auth.: ORS 183.341(2),
471.730(5) & (6)

Stats. Implemented: ORS 183.341(2),
183.460

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 11-2003(Temp), f. & cert. ef. 8-15-03 thru 2-10-04; OLCC 21-2003, f. 11-24-03, cert. ef. 2-10-04

845-003-0670

Retained Authority of Commissioners

(1) The Commissioners retain all authority not specifically delegated.

(2) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order by Default when the default is the result of a party's failure to request a hearing and file an answer or when a party, after requesting a hearing, withdraws the request.

(3) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order by Default when a party, after requesting a hearing, fails to appear at the hearing and the agency file does not constitute the sole record.

(4) The Commissioners delegate to the ALJ the authority to prepare and issue a Final Order by Default when the default is the result of a party's failure to appear at the time scheduled for hearing and the agency file constitutes the sole record.

(5) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order based upon an informal disposition by

settlement.

(6) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order based upon a proposed order where exceptions are not filed timely and the order is not otherwise subject to review by the Commissioners.

(7) The Commissioners delegate to the Administrator the authority to summarily deny requests for reconsideration or rehearing and any stay request based on these requests for reconsideration or rehearing when exceptions or a request to reopen the record has been made by the same participant in the same case.

(8) The Commissioners delegate to the Administrator the authority to grant or deny requests for extension of time within which to file exceptions or comments to a proposed order, in conformity with the requirements of OAR 845-003-0590(3).

Stat. Auth.: ORS 183.341(2) &
471.730(5)(6)

Stats. Implemented: ORS 183.341(2) &
471.730(5)(6)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 18-2003, f. 11-24-03, cert. ef. 12-1-03; OLCC 2-2005, f. 4-21-05, cert. ef. 5-1-05