

**250-001-0035**

**Agency Representation by Officer or Employee**

**(1) A Marine Board employee is authorized to appear on behalf of the Board in a hearing or in a class of contested hearings in which the Attorney General or the Deputy Attorney General has given written consent for such representation.**

**(2) The contested case hearings for which the Attorney General has given its consent for the Marine Board to act as a representative of the agency are outfitted/guide, charter/livery and boat registration.**

**(3) The agency representative may not make legal argument on behalf of the agency.**

**(4) "Legal argument" as used in ORS 183.450(8) and this rule shall 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 an agency;**

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

**(5) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:**

**(a) The application of the facts to the statutes or rules directly applicable to the issues 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 the correctness of procedures being followed.**

**(6) When a Marine Board employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal.**

**(a) Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection.**

**(b) Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.**

Stat. Auth.: ORS 830.110; ORS 183.452

Stats. Implemented: ORS 704.040; ORS 830.465; ORS 830.420; ORS 830.815

Hist: