

839-050-0080

Notice of Hearing

(1) When a party makes a timely written request for a contested case hearing, that hearing will be scheduled in accordance with OAR 839-050-0070 and the Forum will issue a notice of hearing to the participants.

(2) When Formal Charges are issued, the notice of hearing will accompany the Formal Charges.

(3) In civil rights housing cases only, unless a complainant or respondent named in a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law elects to have the matter heard in circuit court under ORS 659A.885 (see ORS 659A.870(4)(b)), a contested case hearing must commence no later than 120 days after Formal Charges are issued. If it is not practicable to commence the hearing within 120 days after Formal Charges are issued, the Administrative Law Judge will include on the notice of hearing or in a separately issued document the general reasons for the delay and will schedule the hearing as soon as practicable.

(4) A notice of hearing will include:

(a) A statement of the time and place of the hearing, including the statement that the hearing will reconvene on successive business days thereafter until concluded;

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

(c) A reference to the particular sections of the statutes and rules involved;

(d) A short and plain statement of the matters asserted or charged;

(e) The name of the administrative law judge designated by the commissioner to preside at the hearing and whether the administrative law judge is an employee of the Agency; and

(f) A statement indicating whether the case for the Agency will be presented by the Department of Justice or by an Agency **administrative prosecutor** *case presenter*.

(5) Sections (3)(c) and (d) above are satisfied if the notice of hearing attaches and incorporates a charging document that includes the matters referred to in those paragraphs.

(6) The notice of hearing may contain a statement that:

(a) When a party fails to timely request a hearing, or having made a timely request subsequently withdraws it, the Agency file will be the evidentiary record of the proceeding;

(b) When, following an answer and request for hearing (when required), the party subsequently notifies the Agency that the party will not appear at the hearing, or, without such notice, the party fails to appear at the hearing, the Agency file will become the contested case record, or a part thereof; and

(c) When a party fails to answer a charging document, the Agency file will become the contested case record, or part thereof, upon default for the purpose of proving a prima facie case.

Stat. Auth.: ORS chapter 183 & 651.060(4)

Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845, 659A.850, 659A.870

839-050-0230

Authority of the Administrative Prosecutor

(1) The Administrative Prosecutor is authorized by ORS chapter 183 to appear on behalf of and represent the Agency. The Administrative Prosecutor may perform any function not prohibited by this rule.

(2) The **administrative prosecutor** *case presenter* may not present legal argument during the contested case proceeding except to the extent authorized by section 3 of this rule. "Legal argument" includes 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.

(3) The administrative law judge may allow the Administrative Prosecutor to present evidence; examine and cross-examine witnesses; and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the Agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(4) When an Administrative Prosecutor is representing the Agency in a hearing, the administrative law judge will advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. When such objections may involve legal argument as defined in section 2 of this rule, the administrative law judge will provide reasonable opportunity for the Administrative Prosecutor to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Stat. Auth.: ORS chapter 183 & 651.060(4)

Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

839-050-0330

Default

(1) Default may occur when:

- (a) A party fails to file a required response, including a request for hearing or an answer, within the time specified in the charging document;
- (b) A party withdraws a request for hearing;
- (c) The Forum has scheduled a hearing and a party notifies the Agency or the administrative law judge that the party will not appear at the specified time and place; or
- (d) Notice regarding the time and place of the hearing was sent to the party and the party fails to appear at the scheduled hearing.

(2) **When the Agency has designated the Agency file, including all the materials submitted by a party, as the record in its charging document, and a circumstance** *Under the circumstances described in (1)(b-d) of this rule occurs, the administrative law judge will **dismiss the party's request for hearing and refer the case to the administrator of the Wage and Hour Division. When this section applies, the Agency file includes all materials in the Agency's investigative file and all materials filed with the forum by the Agency or the party up to the time set for hearing.** take evidence to establish a prima facie case in support of the charging document. If the Agency designated the Agency file as the record in its charging document and no further testimony or evidence is necessary to establish a prima facie case, the Agency file, including all materials submitted by a party, shall constitute the record. No hearing shall be conducted and the administrative law judge shall issue a final order by default. If the Agency has not designated the Agency file as the record and further testimony and evidence is necessary to establish a prima facie case, the administrative law judge will commence the hearing at the scheduled time. If a party fails to appear at the time of hearing, the administrative law judge **shall** wait no longer than 30 minutes from the time set for the hearing **to commence the hearing before orally dismissing the party's request for hearing. The administrative law judge shall subsequently issue a written order dismissing the party's request for hearing.***

(3) If the party failed to appear at the hearing and, before issuing a final order **dismissing the party's request for hearing by default**, the administrative law judge finds that the party had good cause for not appearing, the administrative law judge may not **dismiss the party's request for hearing and** *issue a final order by default under this rule. In this case, the administrative law judge shall schedule a new hearing. If the reasons for the party's failure to appear are in dispute, the administrative law judge shall schedule a hearing on the reasons for the party's failure to appear.*

(4) When a party is in default, the Agency has not designated the Agency file as the record in its charging document, and the administrative law judge has not granted relief from default, the administrative law judge will take evidence of a prima facie case from the Agency at hearing. The administrative law judge will not permit the defaulted party to participate in any manner in the hearing, including, but not limited to, presentation of witnesses or evidence on the party's own behalf, examination of Agency witnesses, objection to evidence presented by the Agency, making of motions or argument, and filing exceptions to the Proposed Order.

Stat. Auth.: ORS chapter 183 & 651.060(4)

Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

839-050-0340

Relief from Default

(1) A party seeking relief from default must file a written request for relief from default within 10 days after any of the following:

- (a) A Final Order by default has been issued by the administrator of the Wage and Hour Division;
- (b) A notice of default has been issued; or
- (c) A party has failed to appear at a hearing and the **administrator of the Wage and Hour Division** *administrative law judge* has issued a Final Order by default.

(2) Relief from default may be granted when the party's written request for relief from default shows good cause for the party's action or inaction that caused the default. The party's request should state any facts supporting the party's claim of good cause and include any documents that support the party's claim.

(3) The computation of the 10-day deadline for filing begins on the day after one of the events listed in (1)(a), (b) or (c) of this rule occurs. If the 10th day is a Saturday, Sunday, furlough day officially recognized by the State of Oregon, or holiday officially recognized by the State of Oregon or the federal government, the 10-day deadline will expire at 5 p.m. of the next day that is not a Saturday, Sunday, furlough day or holiday. A request for relief from default is filed on the date that it is postmarked or received, whichever is earlier.

(4) A request for relief from default made after a Final Order by default has been issued by the administrator of the Wage and Hour Division must be addressed to the administrator of the Wage and Hour Division and ruled upon by an administrative law judge. When the administrator of the Wage and Hour Division receives a request for relief from default, the administrator will forward that request to the Forum for assignment to an administrative law judge, along

with a copy of the Final Order by default. The administrator may also file a response to the request for relief from default. Any response the administrator files will be served on the requesting party.

(5) A request for relief from default made after a notice of default has been issued or after the party has failed to appear at a hearing and the **administrator of the Wage and Hour Division** administrative law judge has issued a Final Order on default must be addressed to and ruled upon by the administrative law judge. If the administrative law judge grants the party's request for relief from default, the administrative law judge shall schedule a new hearing.

Stat. Auth.: ORS chapter 183 & 651.060(4)

Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

839-050-0440

Contested Case Proceedings based on Orders of Determination and Notices of Intent to Assess Civil Penalties under ORS 652.710 or ORS 653.256

(1) Contested case proceedings based on Orders of Determination under ORS 652.332, Notices of Intent to assess civil penalties under ORS 652.710 or 653.256, or consolidated proceedings based on both types of charging documents are governed by the procedures set forth in OAR chapter 839, division 50, except to the extent those procedures are modified by this rule.

(2) The discovery provisions of OAR 839-050-0200 do not apply to contested case proceedings based on Orders of Determination under ORS 652.332, Notices of Intent to assess civil penalties under ORS 652.710 or 653.256, or consolidated proceedings based on both types of charging documents except that participants may seek discovery through an informal exchange of information.

(3) Prior to a contested case hearing based on an Order of Determination under ORS 652.332, Notices of Intent to assess civil penalties under ORS 652.710 or 653.256, or consolidated proceedings based on both types of charging documents, the administrative law judge will issue a case summary order as provided in OAR 839-050-0210(1)-(4). OAR 839-050-0210(5) will apply to evidence not disclosed in response to the case summary order.

(4) No amendments will be allowed in contested case proceedings based on Orders of Determination under ORS 652.332, Notices of Intent to assess civil penalties under ORS 652.710 or 653.256, or consolidated proceedings based on both types of charging documents, except that the agency may amend an Order of Determination or Notice of Intent once to correct names of respondents or to add respondents.

Stat. Auth.: ORS chapter 183 & 651.060(4)

Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850