



# MEMORANDUM

May 12, 2016

**To:** Board Members

**From:** Roger Pearson, WCB Managing Attorney

**Subject:** Continued discussion of OAR 438-005-0046(1)(f) (“filing” by “e-mail”);  
discussion of OAR 438-006-0100(1) (Representation by Counsel).

OAR 438-005-0046(1)(f)

At its March 17, 2016 meeting, the Board discussed a March 16, 2016 staff memo that addressed “jurisdictional” challenges that have been raised at the Hearings Division level when a party directed a hearing request to the Board’s “e-mail” address, without attaching the appropriate “Request for Hearing Form.” Such challenges have been rejected, but may continue to arise. After discussing this matter, the Members decided to present the following “conceptual language” for public comment:

**438-005-0046**

**Filing and Service of Documents; Correspondence**

“(1) Filing:

“\* \* \* \* \*

“(f) To electronically file the requests listed in subsection (e) of this section by e-mail, a party shall:

“(A) Send an e-mail to: request.wcb@oregon.gov; and

“(B) Attach an electronic copy of a completed Workers’ Compensation Board “Request for Hearing Form,” or a completed request for Board review, or a completed request for extension of the briefing schedule, or a completed request for waiver of the Board’s rules, or a completed Board “Response to Issues Form.” These attachments must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg). **Strict compliance with paragraph (B) of this subsection is not jurisdictional. Also,**

**consistent with the Board’s policy in OAR 438-005-0035(3), an unrepresented party shall not be held strictly accountable for failure to comply with Board rules.**

(C) For purposes of this rule, the date of an electronic filing is determined by the date the Board receives the [*appropriate completed electronic form which must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg)*] **e-mail described in paragraph (A) of this subsection.** An electronic filing under subsections (e) and (f) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed on that date.

Thereafter, public comment was requested via an April 2016 announcement through the workers’ compensation list serve, as well as the March and April 2016 issues of the Board’s News and Case Notes. As of the date of this memo, one comment has been received and is attached.

**OAR 438-006-0100(1)**

Effective March 12, 2015, the legislature amended ORS 9.320, deleting the word “corporation” and adding in its place the phrase “party that is not a natural person.” As amended, ORS 9.320 provides:

“Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney, except that the state or a *party that is not a natural person* appears by attorney in all cases, unless otherwise specifically provided by law. Where a party appears by attorney, the written proceedings must be in the name of the attorney, who is the sole representative of the client of the attorney as between the client and the adverse party, except as provided in ORS 9.310.” (Emphasis supplied).

Consistent with the former version of ORS 9.320, OAR 438-006-0100 refers to “corporations.” To conform the administrative rule to the amended statute, the Members may wish to consider proposing an amendment to OAR 438-006-0100 as follows:

“(1) Except as permitted by ORS 656.291 and this rule, [*corporations*] **parties that are not natural persons** and state agencies must be represented by members of the Oregon State Bar. The Board encourages injured workers also to be represented in formal hearings.”

**From:** Craig Miller [mailto:Craig@millerlaworegon.com]  
**Sent:** Thursday, April 07, 2016 2:43 PM  
**To:** SOMERS Holly J \* DCBS  
**Subject:** RE: Public Comment Requested

All I can say is this is well-needed, as the OAR is contrary to the denial language. I recently had one of these where they wanted to push it; luckily, my client sent the form (that I had to track down), so it was withdrawn.

Thank you for acting on this.

Craig

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CRAIG MILLER

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