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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

ED 1-2021

CHAPTER 471

EMPLOYMENT DEPARTMENT

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Amending the procedures for changing administrative law judges

EFFECTIVE DATE: 06/07/2021 THROUGH 12/03/2021

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NEED FOR THE RULE(S):

The Oregon Supreme Court held that the current version of OAR 471-060-0005 is invalid as it is written in *Pulito v. Oregon State Board of Nursing*, 366 Or. 612 (2020). The Office of Administrative Hearings is temporarily suspending the rule and adopting a temporary rule while the permanent rulemaking process occurs.

JUSTIFICATION OF TEMPORARY FILING:

ORS 183.645 allows any party to request a change of the administrative law judge assigned to their case. The statute requires for the first request of a party to be automatically granted (in most cases), subject only to any "time limitations" established by rule. The current rule was intended to establish such a time limitation. The current rule provides that no request for a change will be granted if the party had a "reasonable opportunity" to request a change earlier but did not do so. However, the rule was declared invalid by the Oregon Supreme Court in July 2020 which held that the statute requires a time limitation that is expressed in a finite period of time ascertainable in advance.

This temporary rule is intended to provide a finite deadline consistent with the court's holding. Without this rule, the OAH will not have a rule in place to limit the time in which a party may request a change. This could require the OAH to grant a recusal request even if the request is made the day of the hearing. Such last-minute changes could lead to unnecessary delays and additional costs to the other party.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

AMEND: 471-060-0005

RULE TITLE: Request for Change of Administrative Law Judge

RULE SUMMARY: The Oregon Supreme Court held that the current version of OAR 471-060-0005 is invalid as it is written in *Pulito v. Oregon State Board of Nursing*, 366 Or. 612 (2020). The Office of Administrative Hearings is temporarily suspending the rule and adopting a temporary rule while the permanent rulemaking process occurs.

RULE TEXT:

(1) The purpose of this rule is to establish uniform procedures for the change of assignment of administrative law judges.

(2) The words and terms used in OAR 471-060-0005 have the following meanings:

(a) An administrative law judge is "assigned to the case" when a written notice is sent to a party or agency naming the administrative law judge to preside over a contested case, or the date a party or agency has actual notice of the assignment, whichever is earlier.

(b) "Good cause" to support a request for a change of administrative law judge is any reason why an administrative law judge's impartiality might reasonably be questioned. It includes, but is not limited to, personal bias or prejudice, personal knowledge of disputed facts, conflict of interest, or any other interest that could be substantially affected by the outcome of the proceeding.

(3) Every party and agency in a contested case is entitled to request a change of administrative law judge. Except for hearings provided under ORS 813.410 or 813.440 on suspension of driving privileges, the first request of that party or agency shall be automatically granted so long as it is filed within the time limits established by section (4). If that party or agency makes a subsequent request, the party or agency must show good cause why the administrative law judge should not preside over the hearing. A request for change of administrative law judge in hearings provided under ORS 813.410 or 813.440 on suspension of driving privileges may only be granted on a showing of good cause. The Chief Administrative Law Judge may designate in writing a person (or persons) to rule on requests under this rule.

(4) All requests must be in writing and sent or delivered to the Chief Administrative Law Judge or designee by filing the request with the Office of Administrative Hearings by hand delivery, mail, facsimile transmission, or electronic mail. All requests must be filed within 10 business days after an administrative law judge is assigned to the case.

(a) For purposes of this rule, business days do not include days of scheduled office closure. Scheduled days of office closure include, but are not limited to, Saturdays and the legal holidays identified in ORS 187.010 and 187.020, including Sundays. A request will be considered filed on the date a party or agency mails, faxes, emails, hand delivers, or electronically transmits the request to the Office of Administrative Hearings.

(b) The time for filing a request for a change of the administrative law judge assigned to the case may be extended if the party or agency making the request can demonstrate that the failure to make a timely request was caused by an excusable mistake, surprise, excusable neglect, reasonable reliance on the statement of a party, agency, or the Office of Administrative Hearings relating to procedural requirements. In such cases, the party or agency may file the request within 10 business days after the circumstances that prevented a timely filing have come to an end.

STATUTORY/OTHER AUTHORITY: ORS 183.645

STATUTES/OTHER IMPLEMENTED: