

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN  
SECRETARY OF STATE

CHERYL MYERS  
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK  
DIRECTOR

800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

## PERMANENT ADMINISTRATIVE ORDER

### ED 6-2021

CHAPTER 471

EMPLOYMENT DEPARTMENT

**FILED**

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ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Provides standards for a request to have a new ALJ assigned under ORS 183.645.

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CONTACT: Anne Friend  
503-947-1471  
OED\_Rules@employ.oregon.gov

875 Union Street NE  
Director's Office  
Salem, OR 97311

Filed By:  
Anne Friend  
Rules Coordinator

AMEND: 471-060-0005

REPEAL: Temporary 471-060-0005 from ED 1-2021

RULE TITLE: Request for Change of Administrative Law Judge

NOTICE FILED DATE: 09/28/2021

RULE SUMMARY: OAR 471-060-0005 provides the standards that apply to a request to have a new administrative law judge assigned to a case under the provisions of ORS 183.645.

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. To be entitled to an automatic change of administrative law judge, the party making the request must do so 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(1)

STATUTES/OTHER IMPLEMENTED: ORS 183.645