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CHAPTER 845

OREGON LIQUOR AND CANNABIS COMMISSION

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FILING CAPTION: The amendments adopt Oregon Department of Justice standards for using lay representatives in contested cases.

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RULES:

845-003-0331, 845-003-0670

AMEND: 845-003-0331

RULE TITLE: Employee Representation at Contested Case Hearings

NOTICE FILED DATE: 03/28/2024

RULE SUMMARY: This rule authorizes the types of contested case hearings Commission employees can present on behalf of the Commission and what actions a Commission employee is and is not allowed to perform during a hearing.

RULE TEXT:

(1) As authorized by the Attorney General pursuant to ORS 183.452, Commission employees may appear and participate on behalf of the Commission in the following types of contested case hearings:

- (a) The grant or denial of a new or renewed license, permit, certification, endorsement, approval or other authorization applied for or requested under ORS Chapters 459A, 471, 473, 475C and OAR Chapter 845;
- (b) A withdrawal, suspension, revocation, cancellation, civil penalty or other sanction pursuant to ORS Chapter 471, ORS Chapter 473, ORS Chapter 475C, ORS Chapter 459, ORS 474.115, ORS 459.992, or OAR Chapter 845;
- (c) A violation or dispute based on a retail sales agent agreement; but not a matter where the Commission has proposed to terminate or suspend performance on the agreement; and
- (d) Privilege Tax disputes under ORS 473.060(4); and
- (e) Orders for destruction, dispossession, seizure, transfer, or sale of marijuana items pursuant to ORS 475C.021.

(2) The employee representative's responsibilities include, but are not limited to:

- (a) Presenting evidence;
- (b) Asking questions of all witnesses;
- (c) Presenting information about the facts, and advocating for the Commission's position surrounding the facts;
- (d) Presenting information on how the facts apply to the statutes or rules directly related to the issues in the contested case;
- (e) Presenting information comparing Commission actions in similar situations;

- (f) Presenting information about the literal meaning of the statutes or rules that apply to the issues in the contested case; and
 - (g) Presenting information about the admissibility of evidence or the correctness of procedures being followed.
- (3) The employee representative may not make legal arguments. "Legal arguments" include, but are not limited to, arguments on:
- (a) The jurisdiction of the Commission to hear the contested case;
 - (b) The constitutionality of a statute or rule or the application of a constitutional requirement to the Commission; and
 - (c) The application of court precedent to the facts of the particular contested case proceeding.
- (4) When the Commission determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument.

STATUTORY/OTHER AUTHORITY: ORS 183.341(2), 183.452, 475C.017(2)(d), 471.730(5) & (6)

STATUTES/OTHER IMPLEMENTED: ORS 183.341(2), 183.452

AMEND: 845-003-0670

RULE TITLE: Retained Authority of Commissioners

NOTICE FILED DATE: 03/28/2024

RULE SUMMARY: This rule specifies what authority is retained by the Commissioners and what authority is delegated to the Administrator.

RULE TEXT:

- (1) The Commissioners retain all authority not specifically delegated.
- (2) The Commissioners delegate to the Administrator the authority to grant or deny late hearing requests (frequently called Requests for Relief From Default) as provided in OAR 137-003-0528.
- (3) The Commissioners delegate to the Administrator the authority to grant or deny requests to participate as a party, limited party or interested agency in a contested case under OAR 137-003-0535 or 137-003-0540 and to make all decisions incidental to the request, including, but not limited to, specifying the areas of participation and procedural limitations of participation, granting or denying late petitions, shortening the time within which responses to the petition shall be filed and/or postponing the hearing until disposition is made of the petition.
- (4) The Commissioners delegate to the Administrator the authority to grant or deny a petition for an order to take a deposition of a party pursuant to OAR 137-003-0572. This authority includes, but is not limited to, the ability to designate the terms of the deposition such as the location, manner of recording, time of day and persons permitted to be present during the deposition.
- (5) The Commissioners delegate to the Administrator the authority to grant or deny discovery motions pursuant to OAR 137-003-0568 submitted prior to referral of the contested case to the Office of Administrative Hearings and, if applicable, after the assigned administrative law judge issues a proposed order.
- (6) The Commissioners delegate to the Administrator the authority to respond to questions transmitted to the agency as set forth in OAR 137-003-0635. The scope of the issues that may be transmitted to the agency includes the agency's interpretation of its rules and applicable statutes and which rules or statutes apply to a proceeding.
- (7) The Commissioners delegate to the Administrator the authority to adopt a Final Order based upon an informal disposition by settlement.
- (8) The Commissioners delegate to the Administrator the authority to issue Final Orders by Default.
- (9) The Commissioners delegate to the Administrator the authority to adopt a Final Order based upon a proposed order where exceptions are not filed timely and the order is not otherwise subject to review by the Commissioners.
- (10) The Commissioners delegate to the Administrator the authority to grant or deny requests for extension of time within which to file exceptions or comments to a proposed order, in conformity with the requirements of OAR 845-003-0590(3).
- (11) The Commissioners delegate to the Administrator the authority to grant or deny a motion to postpone oral argument to the Commissioners on any comments or exceptions to a proposed order.
- (12) The Commissioners delegate to the Administrator the authority to grant or deny requests for reconsideration or rehearing and any stay request based on these requests for reconsideration or rehearing when exceptions or a request to reopen the record has been made by the same participant in the same case.
- (13) The Commissioners delegate to the Administrator the authority to grant or deny a request to stay the enforcement of a Final Order pending judicial review and in cases where judicial review has not been requested.

STATUTORY/OTHER AUTHORITY: 471.730(5) & (6), ORS 183.341(2), 475C.017(2)(d)

STATUTES/OTHER IMPLEMENTED: ORS 183.341(2)