



MEMORANDUM

February 1, 2022

To: Board Members

From: Robert Pardington, Managing Attorney

Subject: Changes to Division 438 Rules

Some needed administrative rule amendments have been identified for your consideration. These amendments, if promulgated, can be considered “housekeeping” changes.

Specifically, at several places in the Board’s administrative rules, the phrase “his/her” is used in reference to an Administrative Law Judge, Board Member or the Director of the Department of Consumer & Business Services. It is proposed to remove the pronoun in some rules, and in other rules, replace “his/her” with “they” or “their” or “themselves” as appropriate. A full list of these amended references is set forth below. The proposed amendments are consistent with Governor Brown’s [Executive Order 19-08](#) (“Ensuring Equal Treatment Under the Law to Oregon’s LGBT+ Community”). In other words, the language changes reflect inclusion of “nonbinary” designations. These changes are recommended to become effective immediately.

ORS 183.335(7) specifies types of changes that may be made to a rule without prior notice or hearing. Such alterations are generally referred to as “housekeeping” changes. Such changes include: (1) changing the name of an agency where the change is prescribed by law; (2) changing the name of a program, office, or division within an agency, as long as there is no substantive effect; (3) correcting spelling; (4) correcting grammar, as long as the meaning/application/scope of the rule is not altered; (5) correcting statutory or rule references; or (6) correcting addresses or telephone numbers. ORS 183.335(7).

The Secretary of State's Administrative Rules Unit requires that such "housekeeping" changes not be included in the formal rulemaking process. Instead, the Secretary of State requires that it be notified by a memo, with copies of the rule "changes" highlighted. The Administrative Rules Unit then makes these "housekeeping" changes.

Consistent with this memo, it is recommended that the members announce these proposed actions in advance (through the Notice of Board Meeting and via the "Case News and Notes" January and February issues). Thereafter, these rules will be discussed at a public meeting for consideration as amended rules. Although a formal rulemaking "hearing" is not required, this will provide an opportunity for stakeholders to review the proposed amendments and offer public comment.

The Board's Quarterly Meeting is scheduled for March 15, 2022. Consistent with this memo, the agenda for that meeting will include discussion of these proposed housekeeping rule amendments. If I can be of further assistance, please advise.

1) Adoption/Definitions

OAR 438-005-0040(6) – Delete "his/her"

OAR 438-005-0046(4)(d) – Delete "his/her" and replace with "their"

2) Procedures Prior to Hearing

OAR 438-006-0050 – Delete "his or her"

OAR 438-006-0055 – Delete "his or her"

OAR 438-006-0065(4) - Delete "his or her"

OAR 438-006-0065(5) - Delete first "his/her" and replace with "their";
Delete second "his/her"

OAR 438-006-0078(5) – Delete "his/her"

OAR 438-006-0078(6) – Delete "his/her"

OAR 438-006-0078(6)(a) – Delete "his/her"

OAR 438-006-0095(1) – Delete "himself or herself" and replace with
"themselves"

OAR 438-006-0095(2) – Delete "himself or herself" and replace with
"themselves"

OAR 438-006-0095(4) – Delete first "himself or herself" and replace with
"themselves"; Delete second "himself or herself" and replace with "themselves"

OAR 438-006-0095(5) – Delete first "himself or herself" and replace with
"themselves"; Delete second "himself or herself" and replace with "themselves"

OAR 438-006-0095(6) – Delete first “his/her” and replace with “their”;
Delete second “his/her” and replace with “the”; Delete third “his/her” and
replace with “the”
OAR 438-006-0110 – Delete “his/her”
OAR 438-006-0115(4) – Delete “his/her” and replace with “their”

3) Evidence

OAR 438-007-0005(2) – Delete “herself or himself” and replace with
“themselves”
OAR 438-007-0016 – Delete “his or her” and replace with “their”
OAR 438-0018(5) – Delete “his or her” and replace with “their”
OAR 438-007-0025(1) – Delete “his or her” and replace with “the”

4) Compromise and Settlement

OAR 438-009-0015(1) and (3) – Delete “his or her”

5) Board Review

OAR 438-011-0023 – Delete “he or she has” and replace with “there is”

6) Expedited Claim Service

OAR 438-013-0035(1) – Delete “himself or herself” and replace with
“themselves”

7) Interpreters

OAR 438-020-0005 -- Delete “he/she presides” and replace with “they
preside”

8) Rules of Practice and Procedure/Crime Victims Act

OAR 438-082-0040(7)(b) – Delete “his or her” and replace with “their”

9) Rules of Practice and Procedure/Contested Cases Under Oregon Safe
Employment Act

- A) OAR 438-085-0631- Delete “his or her” and replace with “their”
- B) OAR 438-085-0718 – Delete “his or her”
- C) OAR 438-085-0750(1) – Delete “he or she considers” and replace
with “they consider”
- D) OAR 438-085-0750(2) – Delete “himself or herself” and replace with
“themselves”

E) OAR 438-085-0750(3) – Delete “his or her” and replace with “their”