

Notice of Contested Case Rights and Procedures (Non-OAH Hearings)

Pursuant to ORS 183.413(2), you are entitled to be informed of the following:

1. **Time and place of hearing.** (Choose one of the following options. Option A is for hearings already scheduled; Option B is for hearings not yet scheduled.)

Option A:

The hearing is scheduled at [time and date] at [place].

Option B:

The hearing is not yet scheduled. You will receive notice from [the presiding officer/agency] of the time, date and place of the hearing once the hearing is scheduled.

2. **Issues to be considered at hearing.** (Choose one of the following options that is most appropriate for your agency's situation)

Option A:

The issues to be considered at hearing are set forth in the notice issued by the agency entitled _____ and dated _____, and those issues related to the notice that are properly before the presiding officer to this proceeding.

Option B:

The issues to be considered at hearing are [summarize issues stated in the notice, for example, "Whether your insurance agent's license should be revoked for misappropriation of money belonging to a policyholder." Or, "Whether your claim for benefits should be denied on the ground that you are not eligible because"]

You have the right to respond to all issues properly before the presiding officer and to present evidence and witnesses on those issues.

3. **Authority and Jurisdiction for Hearing.** The matter set for hearing is a contested case. The hearing will be conducted as provided in Chapter 183 and [insert agency's statutory authority] of the Oregon Revised Statutes; the administrative rules of [agency], OAR [insert rule numbers]. Other laws involved include: [insert here.]

4. **Right to attorney.** You may be represented by an attorney at the hearing. Parties are [not] ordinarily and customarily represented by counsel. You are not required to be represented by counsel, unless you are an agency, trust, corporation or association. If you are not represented at the hearing and during the hearing you determine that representation by an attorney is necessary, you may [not] request a recess to allow you an opportunity to secure the services of an attorney. The hearing officer or administrative law judge will decide whether to grant such a request. [Agency] will [not] be represented by an attorney.

Legal aid organizations may be able to assist a party with limited financial resources.

5. **Hearing Officer or Agency Decision Maker.** (Choose one of the following options appropriate to your agency's situation.)

Alternative 1: The person presiding at the hearing is known as the hearing officer. The hearing officer will rule on all matters that arise at the hearing. The hearing officer is an employee holding the position of _____ with [agency] and does have authority to make a final independent determination [does not have authority to make a final independent determination. The final determination will be made by _____ title/position].

Alternative 2: The person presiding at the hearing is known as the hearing officer. The hearing officer will rule on all matters that arise at the hearing. The hearing officer is [title/position] under contract with the agency to perform this service. The hearing officer is not an employee, officer or representative of the agency and does have authority to make a final independent determination [does not have authority to make a final independent determination. The final determination will be made by [title/position].]

Alternative 3: A majority of the [board/commission] will hear the case. One of the members will serve as the presiding officer and will rule on all matters that arise at the hearing. The [board/commission] will render the final determination and there will ordinarily be no opportunity after the [board/commission] issues its order for you to appear before it to object to the order or present additional arguments.

6. **Discovery.** Discovery [is/is not] permitted in this proceeding. If discovery is permitted, choose one of the following:

Option A (For agencies that have adopted the Non-OAH Model Rules): Discovery is permitted as provided in OAR 137-003-0025 and (cite specific agency rule(s) on discovery and give brief description). you must first ask the agency [and the other parties] to provide you with copies of documents or other information relevant to this proceeding. If you are not satisfied with the response of the agency [or other parties] you may ask the hearing officer to order production of the information you seek in accordance with applicable rules.

Option B (For agencies that have not adopted the Model Rules):
cite agency rules on discovery and give a brief description of the procedure.)

7. **Witnesses.** A witness must testify under oath or affirmation to tell the truth. The [agency or hearing officer] will issue subpoenas for witnesses on your behalf upon a showing that their testimony is relevant to the case and is reasonably needed by you to establish your position. If you are represented by an attorney, your attorney may issue subpoenas for attendance of witnesses at hearing. Payment of witness fees and mileage to the person subpoenaed is your responsibility.

8. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether the [agency's] proposed action is appropriate. The order of presentation of evidence is normally as follows:

- a. Testimony of witnesses and other evidence of [agency] in support of its proposed action.
- b. Testimony of your witnesses and your other evidence.
- c. Rebuttal evidence by the [agency] and by you.

9. **Burden of presenting evidence.** The burden of presenting evidence to support an allegation or position rests upon the proponent of the allegation or position. If you have the burden of proof on an issue, or if you intend to present evidence on an issue in which the agency has the burden of proof, you should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the [agency/hearing officer] .

10. **Admissible evidence.** Relevant evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible and will be received. Evidence that is irrelevant, immaterial, or unduly repetitious is excluded. Hearsay evidence is often admissible. The fact that it is hearsay generally affects how much reliance the [agency/hearing officer] will place on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of the agency or hearing officer. The agency or hearing officer may take "official notice" of facts based on the agency's or hearing officer's knowledge in a specialized field. This includes notice of general, technical or scientific facts. The agency or hearing officer may also take "judicial notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. You will be informed if the agency or hearing officer takes "official notice" or "judicial notice" of any fact and you will be given an opportunity to contest any facts so noticed.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of the facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written material may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence.

11. **Objections to evidence.** Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

- a. The evidence is unreliable;
- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
- c. The evidence is unduly repetitious and duplicates evidence already received.

12. **Continuances.** There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. However, if you can show that the record should remain open for additional evidence, the hearing officer may grant you additional time to submit such evidence.

13. **Record.** A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This may be done by use of a tape or digital recorder or court reporter. The record is generally not transcribed, unless there is an appeal to the Court of Appeals. However, you may obtain a copy of the tape recording upon payment of the costs of making a copy of the tape. If a court reporter is used, you may obtain a transcript or a copy of the court reporter's transcript upon payment of a transcription fee or other fee that the parties may agree upon.

14. **Proposed Order, Exceptions, Final Order.** (Choose one of the following options that is most appropriate for your agency's circumstances. These options correspond to the alternatives in paragraph 5 above.)

Alternative 1: Because the ____ [title/position] ____ makes the final decision in this case, the hearing officer will issue a proposed order in the form of recommended findings of fact, conclusions of law and agency action. You will be sent a copy and you will be given an opportunity to make written objections to the hearing officer's recommendations. The parties will be notified when written exceptions to the proposed order must be filed with [if agency allows oral argument, which is optional, add: and also when oral argument may be made to] the ____ [title/position] ____, who will render the final order.

Alternative 2: The hearing officer will recommend to ____ [title/position] ____ a decision in the form of draft findings of fact, conclusions of law and order. The ____ [title/position] ____ will review the draft and decide what will be issued as the proposed order. You will be given an opportunity to make written exceptions (objections) to the proposed order. You will be notified when the exceptions must be filed with [if the agency allows oral argument, which is optional, add: and also when oral argument may be made to] the ____ [title/position] ____, who will render the final order.

Alternative 3: Because the ____ [board/commission] ____ will hear the case and issue a final order after the hearing there will be no opportunity for you to appear before it to object to the order or to present additional arguments prior to issuance of the order.

Note: Some agencies have adopted rules that require a party to ask for reconsideration before seeking judicial review. Agencies that impose this additional requirement should explain the requirement and the procedure for seeking reconsideration, and cite the applicable agency rule.

15. **Appeal.** If you wish to appeal the final order, you must file a petition for judicial review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See Oregon Revised Statutes 183.482.*

NOTE: The Notice of Contested Case Rights and Procedures must be served personally or by mail to the parties **before** the commencement of the hearing. ORS 183.413. We recommend that the notice be enclosed with the notice of the time and date of the hearing or earlier.