

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the

Department of Consumer and Business Services, Building Codes Division 918
Agency and Division Administrative Rules Chapter Number
Holly A. Tucker (503) 378-5331
Rules Coordinator Telephone
PO Box 14470, Salem, OR 97309-0404
Address

To become effective Upon filing, Rulemaking Notice was published in the March 2014 Oregon Bulletin.

RULE CAPTION

Lay representation in division contested case hearings

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

918-001-0025

REPEAL:

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 183.452

Other Authority:

Statutes Implemented:

ORS 183.452

RULE SUMMARY

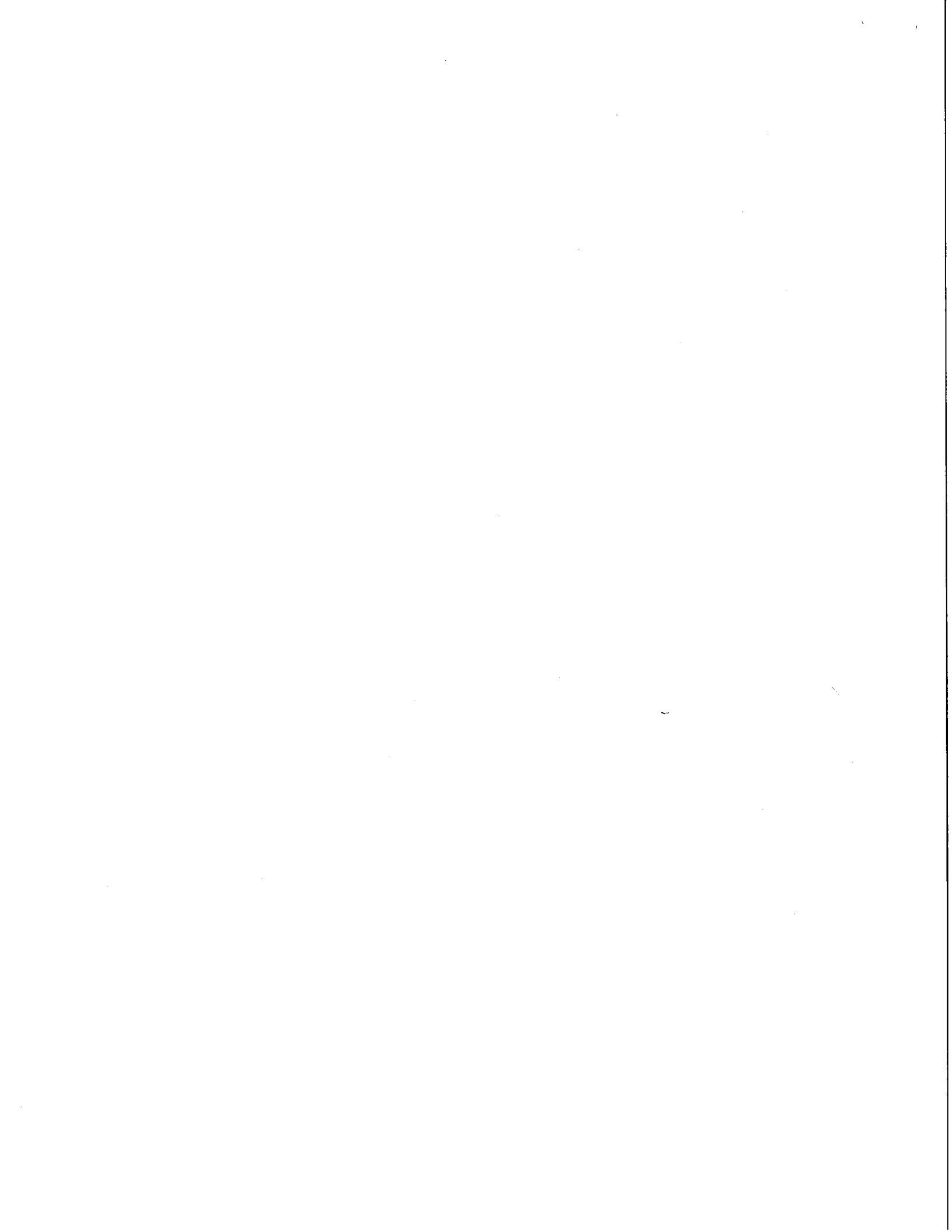
This rule expands the division's ability to use lay representation in contested case hearings based on violation types.

Holly A. Tucker
Rules Coordinator Name

holly.a.tucker@state.or.us
Email Address

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PERMANENT ADMINISTRATIVE RULES

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Adopted on	
03/24/2014	
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RULE CAPTION

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RULEMAKING ACTION

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AMEND: 918-001-0025

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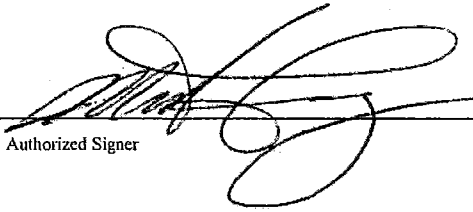
Stat. Auth.: ORS 183.452

Other Auth.:

Stats. Implemented: ORS 183.452

RULE SUMMARY

This rule expands the division's ability to use lay representation in contested case hearings based on violation types.

 Mark Core 3/21/2014
Authorized Signer Printed Name Date

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918-001-0025

Division Representation by Authorized Employee at Contested Case Hearings

(1) An employee of the Building Codes Division authorized by the Administrator may appear on behalf of the division, pursuant to ORS 183.452, at the following types of contested case hearings:

- (a) Civil penalty hearings;
- (b) Hearings held on appeals made to the division under ORS 479.853 by persons aggrieved by a decision made upon inspection authority under ORS 455.148 to 455.150 or 479.510 to 479.860 of an electrical product or electrical installation;
- (c) License and certification denial hearings under ORS 455.117 and the rules adopted thereunder, and ORS 455.125 and 455.129; and
- (d) License discipline hearings under ORS 455.125 or 455.129, for cases involving conditioning of a license or certification, or suspensions of up to one year.

(2) In all other contested case hearings officers or employees of the division may appear on behalf of the division only if prior written consent is obtained from the Attorney General or Deputy Attorney General.

(3) The administrative law judge shall not allow a division representative appearing under section (1) or (2) of this rule to present legal argument as defined in this rule.

(a) "Legal Argument" includes arguments on:

- (A) The jurisdiction of the division to hear the contested case;
- (B) The constitutionality of a statute or rule or the application of a constitutional requirement to a division;
- (C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

- (A) The application of the statutes or rules to the facts in the contested case;
- (B) Comparison of prior actions of the division in handling similar situations;
- (C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;
- (D) The admissibility of evidence; and
- (E) The correctness of procedures being followed in the contested case hearing.

(4) If the administrative law judge determines that statements or objections made by the division representative appearing under section (1) or (2) involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the division representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183.452

Stats. Implemented: ORS 183.452

