

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

ARLEN PORTER SMITH,  
*Petitioner,*

*v.*

DEPARTMENT OF CORRECTIONS,  
*Respondent.*

A157566

Argued and submitted September 8, 2017.

Harrison Latto argued the cause for petitioner. On the briefs was Arlen Porter Smith *pro se*.

Jordan R. Silk, Assistant Attorney General, argued the cause for respondent. With him on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Before Armstrong, Presiding Judge, and Tookey, Judge, and Shorr, Judge.

PER CURIAM

Petition for judicial review dismissed.

## PER CURIAM

Petitioner, an inmate at Two Rivers Correctional Facility, challenges respondent Department of Correction's temporary rules that amended or added to the rules relating to the inmate telephone system and the permanent rules of OAR 291-130-0025(8) and OAR 291-130-0025(14).<sup>1</sup> We first dismiss petitioner's challenge to the temporary rules as moot. The temporary rules were replaced by permanent rules and no longer have any effect. *Smith v. Dept. of Corrections*, 283 Or App 425, 426 n 1, 388 P3d 1118 (2017) (dismissing as moot petitioner's challenge to a temporary rule that was replaced by a permanent rule). We also dismiss petitioner's challenge to the permanent rules because those rules are "rules of conduct" that are not subject to our review of a "rule" under the Administrative Procedures Act, ORS 183.400.

ORS 183.310(9) defines "rule" as

"any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

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"(f) Rules of conduct for persons committed to the physical and legal custody of the Department of Corrections, the violation of which will not result in:

"(A) Placement in segregation or isolation status in excess of seven days.

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<sup>1</sup> OAR 291-130-0025(8) provides:

"Only one inmate at a time shall be permitted access to a VIP call. The inmate who initiates a VIP call is the only person authorized to converse with the contact party during that call. An inmate may be assessed a fee from the inmate telephone service provider if it is verified that more than one inmate participated in a VIP call."

OAR 291-130-0025(14) provides:

"Inmates shall not participate in VIP calls with two or more parties using different IP addresses during the same VIP call. An inmate may be assessed a service fee from the inmate telephone service provider if it is verified he/she has participated in a VIP call with participants using more than one IP address."

“(B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

“(C) Disciplinary procedures adopted pursuant to ORS 421.180.”

In *Smith*, 283 Or App at 428-29, we recently concluded that OAR 291-130-0016(3), which prohibits an inmate from participating in three-way telephone calls or call forwarding and authorizes the telephone service provider to assess a “service fee” if an inmate has done so, is a rule of conduct not subject to review. Here, the two challenged rules also regulate inmate conduct by prohibiting inmates from participating in Video Interactive Phone (VIP) calls with another inmate or with parties using more than one IP address, and, if the inmate does so, then the telephone service provider may assess a “fee” or “service fee.” Like the phone rule in *Smith*, OAR 291-130-0025(8) and OAR 291-130-0025(14) are rules of conduct “that do[] not result in the disciplinary sanctions or procedures set out in ORS 183.310(9)(f) and, accordingly, [are not rules] subject to our review.” *Id.*

Petition for judicial review dismissed.