

**NOTICE OF PROPOSED EXPEDITED RULEMAKING**

**TITLE 2. ADMINISTRATION**

**CHAPTER 5.1 STATE PERSONNEL BOARD**

**PREAMBLE**

**1. Permission to proceed with this proposed expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:**

July 24, 2024

**2. Article, Part, or Section Affected (as applicable)                      Rulemaking Action**

R-2-5.1-101

Answer: New Section, Renumber, Amend, & Repeal.

R-2.5.1-103

R2-5.1-104

**3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 41-781

**4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the current record of the proposed expedited rule:**

[Notice Name]: (volume #) A.A.R. (page #), Issue Date: (date published), Issue Number: (number), File number: (R2#-###)

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Zachariah Tolliver

Title: Executive Director

Division: Arizona State Personnel Board

Address: 1740 W. Adams Street, Suite 3007, Phoenix, AZ 85007

Telephone: (602) 542-3888

Email: [appeals@personnel.az.gov](mailto:appeals@personnel.az.gov)

Website: [personnel.az.gov](http://personnel.az.gov)

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

In response, the Arizona State Personnel Board ("ASPB") is entering the expedited rulemaking process for the purpose of updating our rules to reflect current statutes with respect to time frames and dates. In addition, we've utilized the existing language to amend sections as well as adding minimal language to ensure routing of materials. Also, we repealed one section that was no longer required, while adding an additional section regarding communication amongst parties.

**7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Arizona State Personnel Board (“ASPB”) is most similar to that of a “court.” As a result, we’ve utilized existing court practices to ensure we have an integrity filled due process with respect to our rules. Most amendments that occurred were to reflect current statutes, while other amendments and new additions were implemented to ensure the ASPB is functioning in a court like sense with respect to every matter. In reference, we observed outside state Personnel Boards, as well as, the State of Arizona judicial system to ensure we are up-to-date with current practices.

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

The rulemaking the Arizona State Personnel Board is undergoing is to ensure the rules are comprehensible for those layman or self-represented. In addition, this aids the appeal and whistleblower complaint process as we refine our rules to ensure the integrity of the process is intact.

**9. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):**

This rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

**10. Where, when, and how a person may provide written comments on the proposed expedited rule:**

A person may submit written comments no later than the close of record to the person listed under Item #5. Or in-person at the oral proceeding to be held on Friday, October 11, 2024 at the address under item #5 from 9:00 a.m. to 12:00 p.m.

Close of Record: October 9, 2024

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

(Editor’s Note: All agencies answer the first part of the question here.)

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Not Applicable.

**c. Whether a person submitted an analysis to the agency regarding the rule’s impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.**

Not Applicable.

**12. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:**

Not Applicable.

**13. The full text of the rules follows:**

See attached.

**AGENCY CERTIFICATE**

**NOTICE OF PROPOSED EXPEDITED RULEMAKING**

**1. Agency name:**

Arizona State Personnel Board

**2. Chapter # and heading:**

Title. 2 Administration, Ch.5.1 State Personnel Board,

**3. Code Citation for the Chapter:**

Title. 2. A.A.C., Chapter 5.1 State Personnel Board.

**4. Article, Part, or Section Affected (as applicable)**

See attached.


**Rulemaking Action**

Amend, new section, repeal.

**5. The rules contained in this rulemaking package are true and correct as proposed.**

The rules containing in this rulemaking package are true and correct as proposed by the Arizona State Personnel Board.

**6.**

  
\_\_\_\_\_  
Signature of agency chief executive officer in ink\*

Zachariah Tolliver

\_\_\_\_\_  
Typed name of signer\*

September 10, 2024

\_\_\_\_\_  
Date signed

Executive Director

\_\_\_\_\_  
Title of signer

\* Signature of signer and typed name must match

**AGENCY RECEIPT**

**NOTICE OF PROPOSED EXPEDITED RULEMAKING**

**1. Agency name:**

Arizona State Personnel Board

**2. Chapter number and heading:**

Ch.5.1 State Personnel Board

**3. Code Citation for the Chapter:**

Title. 2. A.A.C., Chapter 5.1 State Personnel Board.

**4. Any Subchapter, if applicable; Article; Part, if applicable; and Section involved in the rulemaking, listed in alphabetical and numerical order:**

R2-5.1-101

R2-5.1-103

R2-5.1-104

**Article, Part, or Section Affected (as applicable)**

R2-5.1-101

R2-5.1-103

R2-5.1-104

**Rulemaking Action**

Amendments, repeal, new section



Zachariah Tolliver &lt;zachariah.tolliver@personnel.az.gov&gt;

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**Permission to Proceed w/ Rulemaking**

2 messages

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**John Owens** <jowens@az.gov>  
To: Zachariah Tolliver <zachariah.tolliver@personnel.az.gov>

Wed, Jul 24, 2024 at 1:09 PM

Zachariah,

As specified in ARS 41-1039, this serves as approval for the State Personnel Board to proceed with the rulemaking amending R2-5.1-101 through R2-5.1-104, as outlined in the attached documents.

Please let me know if you have any questions. I look forward to receiving your request to proceed to GRRC at the conclusion of the process.

Warmly,  
John

**John Owens (He/Him/His)**

Operations &amp; Policy Advisor

[jowens@az.gov](mailto:jowens@az.gov)

Office of Governor Katie Hobbs

[1700 W Washington St.](#)[Phoenix, AZ 85007](#)

Cell: 602.679.5610

<https://azgovernor.gov>

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**2 attachments** **Administrative Code - Title 2. Ch. 5.1 State Personnel Board - MASTER (2).pdf**  
183K **Administrative Code - Title 2. Ch. 5.1 Notes (2).pdf**  
502K

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**Zachariah Tolliver** <zachariah.tolliver@personnel.az.gov>  
To: John Owens <jowens@az.gov>

Wed, Jul 24, 2024 at 1:50 PM

Thank you!

**Zachariah Tolliver**  
Executive Director  
Arizona State Personnel Board  
1740 W. Adams St., Suite 3007  
Phoenix, AZ 85007

Board Members:  
Mark Ziska, Chair  
Jeanine Inman, Vice Chair  
Jason Dudek

KATIE HOBBS, Governor  
Zachariah Tolliver, Executive Director



September 10, 2024

### **Notice of Expedited Rulemaking Process**

This letter serves as notice that the Arizona State Personnel Board ("ASPB") is entering the Expedited Rulemaking process before the Governor's Regulatory Review Council ("GRRC") as of September 10, 2024.

On July 24<sup>th</sup>, 2024, the ASPB received approval from the Governor's Office to enter the Expedited Rulemaking process for the purpose of amending Title 2. Administration, Ch. 5.1 State Personnel Board, to reflect current statutes as well as minor amendments to language.

In accordance with A.R.S. §41-1039, the Arizona State Personnel Board received an exception from its Policy Advisor at the Governor's Office.

Please note, as of Tuesday, September 10, 2024, the Arizona State Personnel Board is in the 30-day public comment period, after notifying its stakeholders. An in-person oral proceedings will be held at the State Office Building located at: 1740 W. Adams Street, Phoenix, AZ 85007, in Boardroom A. on October 11<sup>th</sup>, 2024 from 9:00 a.m. to 12:00 p.m.

Public comments can be made by email to: [appeals@personnel.az.gov](mailto:appeals@personnel.az.gov) or at the in-person oral proceedings to be held on Friday, October 11, 2024 from 9:00 a.m. to 12:00 p.m. at 1740 W. Adams Street, Phoenix, AZ 85007, Boardroom A.

Enclosed, you'll find a brief description of the amendments made as well as a copy of the proposed rules we intend to set forth to represent the Arizona State Personnel Board.

Sincerely,

Zachariah Tolliver  
Executive Director  
Arizona State Personnel Board



## Arizona State Personnel Board

1740 West Adams Street, Suite 3007  
Phoenix, Arizona 85007  
Phone: (602) 542-3888

### Title 2. Administration

#### Ch. 5.1 State Personnel Board

#### Proposed Amendments, additions, and removals of Ch. 5.1 State Personnel Board

##### Amendments

- **Definitions**
  - Added language to "11. Subpoena" now read "11. Subpoena Ad Testificandum"
  - Added language to "12. Subpoena Duces Tecum" – "a witness or entity to provide specific records"
- **R-2 – 5.1-103 Appeal Procedures**
  - Amended section "F" heading to read as "Request to Strike Hearing Officer"
  - Amended "G. Notice of Hearing" added verbiage "The docket number assigned by the Board" & "30 calendar days"
  - Amended "I. Time for Hearing" updated to sixty (60) calendar days"
  - Amended section "J. Nature of Hearing" Broke down existing verbiage into numbers 1 – 6.
  - Amended "P" heading to consolidate "Exhibits; Witness List"
    - Added language
      - "and the Board office"
      - "14 calendar days"
      - "three"
      - "Appellant, witness, and the hearing officer."
      - "In addition to, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along
  - Amended Section "Q. Exclusion of witnesses" added verbiage "Upon the request or "motion of any appellant or respondent."
  - Amended Section U. Failure of a party to appear. Added verbiage "or vacate the hearing and return to the Board for any further action."



- **R-2 5.1-104 Complaint Procedures**

- Amended section “F” heading to read as “Request to Strike Hearing Officer”
- Amended “G. Notice of Hearing” added verbiage “The docket number assigned by the Board” & “30 calendar days”
- Amended “I. Time for Hearing” updated to sixty (60) calendar days”
- Amended section “J. Nature of Hearing” Broke down existing verbiage into numbers 1 – 6.
- Amended “P” heading to consolidate “Exhibits; Witness List”
  - Added language
    - “and the Board office”
    - “14 calendar days”
    - “three”
    - “Appellant, witness, and the hearing officer.”
    - “In addition to, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along
- Amended section “Q. Exclusion of Witnesses” language “request or”
- Amended Section “T. Failure of a party to appear” language Added verbiage “or vacate the hearing and return to the Board for any further action.

### Additions

- **R-2 – 5.1 – 103 Appeal Procedure**

- Added New Section “E. “Ex Parte Communication”
- Added Section K. Record of Hearing w/ existing language
- Added Section L. Burden of Proof w/ existing language

- **R-2 – 5.1 – 104 Complaint Procedures**

- Added New Section “E. “Ex Parte Communication””

### Removals

- **R2 – 5.1 -103 Appeal Procedures**

- Removed Section B. Change of Address
- Removed Section V. Conclusion of Hearing
  - Consolidated under section “J. Nature of Hearing” Number 6.
- Removed Section “T. Proposed Findings of Fact”
  - Consolidate under “W. Objection of Findings”
- Removed section “M. Witnesses” now consolidated in New Section “P. Exhibits; Witness List.”

- **R2 – 5.1 – 104 Complaint Procedures**

- Removed Section “B. Change of Address”
- Removed/Consolidated to another section
  - “T. Conclusion of Hearing” consolidated w/ “J. Nature Of Hearing – 6”
  - “U. Proposed Finding of Facts” consolidated w/ “V. Objections to Findings – 1”

## Arizona State Personnel Board

## TITLE 2. ADMINISTRATION

## CHAPTER 5.1. STATE PERSONNEL BOARD

(Authority: A.R.S. § 41-781 et seq.)

*Laws 1983, Ch. 98. § 162 limited authority of the Personnel Board. Prior rules and regulations for the Board were found in A.C.R.R. Title 2, Chapter 5, now consisting of rules and regulations of Personnel Administration, Department of Administration.*

## ARTICLE 1. GENERAL PROVISIONS

## Section

- R2-5.1-101. Definitions  
 R2-5.1-102. Personnel Board Procedures  
 R2-5.1-103. Appeal Procedures  
 R2-5.1-104. Complaint Procedures

## ARTICLE 1. GENERAL PROVISIONS

**R2-5.1-101. Definitions**

Unless the context requires otherwise, the following definitions govern in this Chapter:

1. "Agency" for purposes of appeal from a disciplinary action, means an employing state entity that takes an appealable disciplinary action against a covered employee in covered service as defined by A.R.S. § 41- 741.
2. "Appeal" means a written request filed with the Board by a permanent covered employee in covered service seeking relief from dismissal, involuntary demotion, or suspension of more than 80 working hours.
3. "Appellant" means a permanent covered employee in covered service who files an appeal with the Board.
4. "Complainant" means an employee or former employee as defined in A.R.S. § 38-531 who files a complaint with the Board.
5. "Complaint" means a written request for relief under A.R.S. § 38-532 filed with the Board by an employee or former employee.
6. "Day" means a calendar day, unless otherwise stated.
7. "Deposition" means a form of discovery in which testimony of a witness given under oath or affirmation and subject to cross-examination is recorded in writing prior to a hearing.
8. "Hearing" means an administrative proceeding at which the appellant or complainant and the respondent are given the opportunity to present oral or written evidence.
9. "Hearing officer" means a person appointed by the Board, including any member of the Board to act as the trier of fact.
10. "Respondent" means an agency or individual whose interests are adverse to those of an appellant or complainant or who will be directly affected by the Board's decision.
11. "Subpoena Ad Testificandum" means a legal document issued under authority of the Board to compel the appearance of a witness at a hearing.
12. "Subpoena duces tecum" means a legal document issued under authority of the Board to compel a witness or entity to provide specific records.

**Historical Note**

Adopted effective November 10, 1983 (Supp. 83-6).  
 Former Section R2-5.1-101 renumbered to R2-5.1-102;  
 new Section R2-5.1-101 adopted by final rulemaking at 7

A.A.R. 44, effective December 13, 2000 (Supp. 00-4).  
 Amended by final rulemaking at 9 A.A.R. 22, effective  
 February 7, 2003 (Supp. 02-4). Amended by exempt  
 rulemaking at 18 A.A.R. 2926, effective October 29,  
 2012 (Supp. 12-4). Amended by final rulemaking at 20  
 A.A.R. 1379, effective August 3, 2014 (Supp. 14-2).

**R2-5.1-102. Personnel Board Procedures**

- A. Meetings. The Board shall provide public notice of the date, time, and place of its monthly meetings and any special, emergency, or other meetings it deems necessary. The Board shall give notice as required by law.
- B. Agenda. The agenda shall be mailed or electronically provided, as required by law, to each member of the Board, a state agency indicating an interest in receiving the agenda, and all parties in a matter scheduled for a Board meeting. The Board's failure to mail or electronically provide the agenda, or failure of an agency to receive the agenda, does not affect the validity of the meeting or of any action taken by the Board at the meeting.
- C. Minutes. The Board shall record in the Board's minutes the date, time, and place of each meeting of the Board, names of the Board members present, all official acts of the Board, the votes of each Board member except when the acts are unanimous, and, when requested by a member, a member's dissent with the member's reasons. Board staff shall prepare and present the minutes for approval by the Board members at the next regular meeting. The Board shall provide copies of the approved minutes to the appellant, complainant, and respondent within seven days of the regular meeting at which the minutes are approved.

**Historical Note**

Adopted effective November 10, 1983 (Supp. 83-6).  
 Amended subsection (B)(2) effective March 3, 1988  
 (Supp. 88-1). Corrections to subsections (B)(2) and (4)  
 from revised format edition published February 1991  
 (Supp. 96-1). Former Section R2-5.1-102 renumbered to  
 R2-5.1-103; new Section R2-5.1-102 renumbered from  
 R2-5.1-101 and amended by final rulemaking at 7 A.A.R.  
 44, effective December 13, 2000 (Supp. 00-4). Manifest  
 typographical error corrected in Section heading (Supp.  
 01-2). Amended by final rulemaking at 9 A.A.R. 22,  
 effective February 7, 2003 (Supp. 02-4). Amended by  
 final rulemaking at 20 A.A.R. 1379, effective August 3,  
 2014 (Supp. 14-2).

**R2-5.1-103. Appeal Procedures**

- A. Appeal. A permanent status, covered employee who wishes to appeal a disciplinary action shall, no later than 10 business days after the effective date of the action, file a written appeal with the Board in accordance with A.R.S. § 41-783. The appeal shall include:
  1. The appellant's name, telephone number, address and e-mail address, if applicable;
  2. The name of the agency taking the disciplinary action being appealed;
  3. The name, telephone number, address, and e-mail address of the appellant's representative, if applicable;

4. A specific response to the causes for disciplinary action upon which the appeal is based; and
5. The action requested of the Board.
- B.** Routing of appeal. The Board shall provide a copy of an appeal to the respondent within five business days from the date of filing, and not less than 20 days before the hearing.
- C.** Hearing officer. The Board, including any member of the Board, may assign an appeal or may direct staff to assign an appeal to a hearing officer for hearing. When an appeal is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of an appeal to a hearing officer does not preclude the Board, including any member of the Board, from withdrawing the assignment and the Board conducting the hearing or from reassigning the appeal to another hearing officer.
- D.** Ex parte communications. A party shall not communicate, either directly or indirectly, with the hearing officer about any substantive issue in a pending matter unless:
1. All parties are present;
  2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
  3. It is written by request or motion with copies to all parties.
- E.** Request to Strike hearing officer. A party may request to change the hearing officer assigned to hear an appeal by filing a request in writing with the Board within five business days after receipt of the first hearing notice. The request shall state the reasons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.
- F.** Notice of hearing. The Board shall provide the appellant and respondent with written notice of the time, date, and place of hearing of an appeal, the docket number assigned by the Board and the name and contact information of the hearing officer at least 30 calendar days before the date of the hearing.
- G.** Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the prehearing conference shall be binding at the hearing.
- H.** Time for hearing. The Board or the Board's hearing officer shall hold a hearing on an appeal within 60 calendar days after the Board receives the appeal unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a written request under this subsection. A request for continuance shall be made no less than five days prior to the scheduled hearing date and shall not be granted absent a showing of good cause. Good cause includes, but is not limited to, scheduling conflicts and unavailability of witnesses. The hearing officer shall grant or deny a request for continuance in his or her discretion.
- I.** Nature of hearing.
1. Every hearing shall be open to the public unless the appellant requests a confidential hearing.
  2. A party may be self-represented or may designate a representative as provided by law.
  3. Every hearing shall be conducted as a quasi-judicial proceeding.
  4. All witnesses shall testify under oath or by affirmation.
  5. Hearings shall be conducted in a manner that promotes and upholds the due process rights of the parties.
  6. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the appeal by the Board, and, if requested, the hearing officer shall assist.
- J.** Record of Hearing. A record of the proceeding shall be made and kept by the Board for three years. Before the Board takes final action, the parties may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Board and shall pay the reasonable cost for duplication.
- K.** Burden of Proof. The respondent has the burden of proof and shall present its case first.
- L.** Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The appellant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.
- M.** Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.
- P.** Exhibits; Witness List. A party introducing an exhibit shall furnish the opposing party and the Board office with a copy of the exhibit no later than 14 calendar days prior to the hearing. Both parties should be prepared with three additional copies of proposed exhibits for presentation of their cases on the day of the hearing for utilization by the opposing party, witness, and the hearing officer. The hearing officer shall make the determination at the hearing as to whether additional evidence and exhibits are necessary to ensure the Board has a complete record for review. The hearing officer shall consider the prejudice to the party who has not seen the additional evidence when making the determination to either include or preclude the evidence. In addition, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.
- Q.** Exclusion of witnesses. Upon the request or motion of an appellant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.
- R.** Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the appellant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate, available from the DOA General Accounting Office website regarding travel reimbursement.
- S.** Telephonic testimony. The appellant or respondent may request through a motion that a party or witness testify telephonically

if personal attendance would present an undue or excessive hardship for the party or witness and would not cause undue prejudice to a party. Undue prejudice will be defined as improper or unfair treatment which impacts a due process right of a party. The hearing officer shall rule on the request, in his or her discretion, whether telephonic testimony is warranted and whether the moving party will be required to pay for the cost of obtaining the telephonic testimony.

- T. Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.
- U. Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence, or vacate the hearing and return to the Board for any further action.
- V. Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.
- W. Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the appellant and respondent. The appellant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board within 15 calendar days from receipt of the appellant or respondent objection but must be 48 hours prior to the Board meeting. The Board shall not consider untimely objections or responses.
  - 1. Proposed findings of fact from the parties shall be included in the "objection to findings"
- X. Withdrawal of appeal. An appellant may withdraw an appeal at any time prior to the decision of the Board by submitting a written withdrawal letter to the Board.
- Y. State Personnel Board decision. Within the time required by law, the Board shall notify the appellant and respondent of the date, time, and place of the Board meeting at which the appeal will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the appeal allowed by law. The Board shall make a decision on the appeal in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the appellant and respondent by certified mail, return receipt requested. If the Board orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay in the amount and for the period the Board determined to be proper.
- Z. Appeal of Board decisions in court. The appellant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 41-783.

#### Historical Note

New Section renumbered from R2-5.1-103 renumbered from R2-5.1-102 and amended by final rulemaking at 7

A.A.R. 44, effective December 13, 2000 (Supp. 00-4).  
Amended by final rulemaking at 9 A.A.R. 22, effective

February 7, 2003 (Supp. 02-4). Amended by exempt rulemaking at 18 A.A.R. 2926, effective October 29, 2012 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 1379, effective August 3, 2014 (Supp. 14-2).

#### R2-5.1-104. Complaint Procedures

- A. Complaint. An employee or former employee as defined in A.R.S. § 38-531 who wishes to file a complaint shall, no later than 10 calendar days after the effective date of the alleged prohibited personnel practice that is the subject of the complaint, file a written complaint with the Board in accordance with A.R.S. § 38-532. The complaint shall include:
  - 1. The complainant's name, telephone number, address, and e-mail address, if applicable;
  - 2. The name, telephone number, address, and e-mail address of the complainant's representative, if applicable;
  - 3. A concise statement of the facts constituting the alleged prohibited personnel practice;
  - 4. The name of the agency or employee believed to have knowingly committed the prohibited personnel practice; and
  - 5. The date and place of the alleged prohibited personnel practice.
- B. Routing of complaint. The Board shall provide a copy of a complaint to the respondent within five business days from the date of filing, and not less than 20 days before the hearing.
- C. Amending a complaint. A complainant may move to amend a complaint. An amendment shall relate only to the facts and circumstances under the original complaint and shall not relate to new causes of action. The hearing officer shall grant or deny the motion or shall refer the motion to the Board for disposition.
- D. Hearing officer. The Board, including any member of the Board, may assign a complaint or may direct staff to assign a complaint to a hearing officer for hearing. When a complaint is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing, and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of a complaint to a hearing officer does not preclude the Board, including any member of the Board, from withdrawing the assignment and the Board conducting the hearing or from reassigning the complaint to another hearing officer.
- E. Ex parte communications. A party shall not communicate, either directly or indirectly, with the hearing officer about any substantive issue in pending matter unless:
  - a. All parties are present;
  - b. It is during a scheduled proceedings, where an absent party fails to appear after proper notice; or
  - c. It is written by request or motion with copies to all parties.
- F. Request to strike hearing officer. A party may request to change the hearing officer assigned to hear a complaint by filing a request in writing with the Board within five business days after receipt of the first hearing notice. The request shall state the reasons for the change of hearing officer. The Board shall not grant a change of hearing officer unless the party demonstrates a clear case of bias or prejudice.
- G. Notice of hearing. The Board shall provide the complainant and respondent with written notice of the time, date, and place of hearing of a complaint, the docket number assigned by the Board and the name and contact information of the hearing officer at least 30 calendar days before the date of the hearing.
- H. Prehearing conference. The Board or the Board's hearing officer may hold a prehearing conference with the parties either in person or telephonically. Any agreement reached at the prehearing conference shall be binding at the hearing.

- I.** Time for hearing. The Board or the Board's hearing officer shall hold a hearing on a complaint within 60 calendar days after the Board receives the complaint unless the Board or the Board's hearing officer finds good cause to extend the time pursuant to a written request under this subsection. A request for continuance shall be made no less than five days prior to the scheduled hearing date and shall not be granted absent a showing of good cause. Good cause includes, but is not limited to, scheduling conflicts and unavailability of witnesses. The hearing officer shall grant or deny a request for continuance in his or her discretion.
- J.** Nature of hearing.
1. Every hearing shall be open to the public unless the complainant requests a confidential hearing.
  2. A party may be self-represented or may designate a representative as provided by law.
  3. Every hearing shall be conducted as a quasi-judicial proceeding.
  4. All witnesses shall testify under oath or by affirmation.
  5. Hearings shall be conducted in a manner that promotes and upholds the due process rights of the parties.
  6. Conclusion of hearing. The Board shall consider the hearing concluded when the Board receives the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. The Board may request that the hearing officer be present during the consideration of the complaint by the Board, and, if requested, the hearing officer shall assist.
- K.** Record of Hearing. A record of the proceeding shall be made and kept by the Board for three years. Before the Board takes final action, the parties may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to Board office and shall pay the reasonable cost for duplication.
- L.** Burden of Proof. The complainant has the burden of proof and shall present its case first.
- M.** Rules of evidence. The Board or the Board's hearing officer shall grant a request for a confidential hearing made by the respondent if the hearing involves evidence the state is precluded by law from disclosing. The complainant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. The Board or the Board's hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.
- N.** Requesting, serving, and enforcing subpoenas. A party may request a subpoena to require the attendance of a witness or a subpoena duces tecum to require the production of a document. A party shall file with the Board a completed request for subpoena prior to the scheduled hearing date. The Board shall prepare the subpoena and return the subpoena to the requesting party for service. A person who is not a party and is at least 18 years of age may serve a subpoena. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.
- O.** Exhibits; Witness List. A party introducing an exhibit shall furnish the opposing party and the Board with a copy of the exhibit no later than 14 calendar days prior to the hearing. Both parties should be prepared with three additional copies of proposed exhibits for presentation of their cases on the day of the hearing for utilization by the witness, opposing party, and the hearing officer. The hearing officer shall make the determination at the hearing as to whether additional evidence and exhibits are necessary to ensure the Board has a complete record for review. The hearing officer shall consider the prejudice to the party who has not seen the additional evidence when making the determination to either include or preclude the evidence. In addition to, parties shall exchange a list of the witnesses each party intends to call to testify at the hearing, along with a brief statement as to the substance and relevancy of the testimony.
- P.** Exclusion of witnesses. Upon the request or motion of a complainant or respondent, the hearing officer may exclude from the hearing room any witness who is not at the time under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.
- Q.** Witness fees. A witness who is not a state employee and is subpoenaed to attend a hearing is entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board. If the complainant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage at the current Arizona Department of Administration reimbursement rate, available from the DOA General Accounting Office website regarding travel reimbursement.
- R.** Telephonic testimony. The complainant or respondent may request through a request or motion that a party or witness testify telephonically if personal attendance would present an undue or excessive hardship for the party or witness and would not cause undue prejudice to a party. Undue prejudice will be defined as improper or unfair treatment which impacts a due process right of a party. The hearing officer shall rule on the request, in his or her discretion, whether telephonic testimony is warranted and whether the moving party will be required to pay for the cost of obtaining the telephonic testimony.
- S.** Deposition. A party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.
- T.** Failure of a party to appear. If a party fails to appear at a hearing, the hearing officer shall allow the appearing party to present evidence, or vacate the hearing and return to the Board for any further action.
- U.** Hearing officer report. The hearing officer shall submit written proposed findings of fact, conclusions of law, and a recommendation, including a brief statement of reasons for the hearing officer's findings and conclusions, within 30 days after the last date of the hearing. If the parties are required to file written closing arguments or briefs to the hearing officer, the hearing officer shall submit proposed findings, conclusions, recommendation, and reasons within 30 days after the closing arguments or briefs are due.
- V.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the complainant and respondent. The complainant and respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact and conclusions of law with the Board within 15 calendar days after receipt of the hearing officer's proposed findings of fact and conclusions of law, unless extended by the Board upon a written motion filed with the Board, and shall serve copies of the objections upon the other party. The opposing party may file a written response to the objections with the Board within 15 calendar days from receipt of the appellant or respondent objection but must be 48 hours prior to the Board meeting. The Board shall not consider untimely objections or responses.
1. Proposed findings of fact from the parties shall be

included in the "objection to findings"

- W.** Withdrawal of complaint. A complainant may submit a written request to withdraw a complaint at any time prior to the decision of the Board. The Board shall rule on the request.
- X.** State Personnel Board decision. Within the time required by law, the Board shall notify the complainant and respondent of the date, time, and place of the Board meeting at which the complaint will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the complaint allowed by law. The Board shall determine the validity of the complaint and whether a prohibited personnel practice was committed against the employee or former employee as a result of the employee or former employee's disclosure of information of a

matter of public concern. The Board shall make a decision on the complaint in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the complainant and respondent by certified mail, return receipt requested. If the Board determines a prohibited personnel practice was committed as a result of a disclosure of information by the employee or former employee, the Board shall act in accordance with the requirements of A.R.S. § 38-532.

- Y.** Appeal of Board decisions in court. The complainant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 38-532.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 22, effective February 7, 2003 (Supp. 02-4). Amended by final rulemaking at 20 A.A.R. 1379, effective August 3, 2014 (Supp. 14-2)