

Office of Administrative Hearings

Five Year Review Report

A.A.C. Title 2, Chapter 19, Article 1

March 8, 2013

Information That is Identical Within Groups of Rules

Under A.A.C. RI-6-111(B), the following information is discussed only once because it is identical for the rules listed:

1. **General Statute Authorizing the Rules:**

All of the rules are generally authorized by A.R.S. § 41-1092.01(C)(4), which provides that the Office may make rules to carry out the purposes of the Uniform Administrative Hearings Procedures. Specific statutes authorizing the Rules will be addressed under each Rule, below.

2. **Effectiveness of the Rules in Achieving Their Objectives:**

The rules effectively achieve their objectives. The content of each of the rules must be maintained so the Office can efficiently and effectively perform its statutory responsibilities.

3. **Consistency of the Rules with State and Federal Statutes and Rules**

The rules are consistent with the Uniform Administrative Hearings Procedures in A.R.S. Title 41, Chapter 6, Article 10. The Rules are also consistent with state statutes as of the date of the Five-Year Review Report. The language in R2-19-122 will be conformed to A.R.S. § 12-904 as that will be amended July 1, 2013, specifically detailed below under Analysis of Individual Rules.

4. **Agency Enforcement Policy**

The Office follows the promulgated rules as written, and there are no problems with enforcement.

5. **Clarity, Conciseness, and Understandability:**

All of the rules are clear, concise, and understandable.

6. **Written Criticisms:**

No written criticisms regarding the rules have been received during the last five years.

7. **Economic, Small Business, and Consumer Impact:**

The economic impact of the rules has not differed significantly from that projected in the economic impact statement submitted in December 1998, when these rules were submitted. A copy of the 1998 EIS is attached. In this report, minimal means less than \$ 1,000, moderate means \$ 1,000 to \$10,000 and substantial means more than \$10,000.

8. **Analysis Submitted Regarding Impact on This State's Business Competitiveness:**

The Office has not received any submission regarding impact of these rules on this State's Competitiveness.

9. **Completion of Proposed Course of Action in the Previous Five-Year Review Process:**

The Office did not propose any course of action in its 2008 five-year review process.

10. **The Rules Impose the Least Burden and Costs and the Probable Benefits of the Rules Outweigh Probable Costs:**

The Office determines that the probable benefits outweigh the probable costs of the rules, and that the rules impose the least burden or cost to those regulated by the rules in order to achieve their underlying regulatory objective.

11. **Course of Action Proposed by the Office Regarding Each Rule:**

The Office will amend R2-19-122 to substitute "notice of appeal" for "complaint" to conform with a statutory change in A.R.S. § 12-904. See detail under R2-19-122.

12. **Determination that the Rules are not more stringent than corresponding Federal Law:**

There is no corresponding Federal Law.

13. **Rules that Require the Issuance of a Regulatory Permit, License or Agency Authorization:**

No Rule requires the issuance of a regulatory permit, license, or agency authorization.

Analysis of Individual Rules

R2-19-101. Definitions

1. **Authorization:**

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. **Objective:**

This rule sets forth the definition or meaning of certain words or phrases that are used throughout the Office's rules. These definitions make the rules clearer and more understandable. They also clarify the words and phrases that could have more than one meaning, a specific meaning intended by the Office, or that could be considered vague.

R2-19-102. Applicability

1. **Authorization:**

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. **Objective:**

The purpose of this rule is to define the type of cases to which the procedural rules will apply. In addition, it makes clear that the rules can be waived or augmented to suit the particular needs of a given case.

R2-19-103. Request for Hearing

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule lists the information that the office needs in order to create a docket, make a selection of date, time, and location for the hearing, and appoint an administrative law judge.

R2-19-104. Assignment of Administrative Law Judge; Setting the Hearing

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule requires the Office to respond to agency requests for hearing within 7 days with an assignment of administrative law judge, and the date, time, and location of the hearing.

Agencies are then able to incorporate the information into their notices of hearing to be served on the parties informing them of the date, time, and location of the hearing.

R2-19-105. Ex Parte Communications

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule prohibits contact between administrative law judges and any party about substantive issues unless all parties are present, during scheduled proceedings where a party fails to appear after proper notice, or through written motions with copies sent to all parties.

R2-19-106. Motions

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule provides an underlying structure for all actions by parties to seek a ruling by an administrative law judge. The rule cites to other rules that provide the basis for certain rules. The form, time limits, responses, oral argument, and ruling are applied universally to all motions.

R2-19-107. Computing Time

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B)

2. Objective:

This rule provides a universal method of calculating when parties must act.

R2-19-108. Filing Documents

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule provides guidance as to what must be filed with the Office and how the office will reflect the filing. It also provides guidance about form and spells out the requirement that all parties receive a copy of all filings to prevent ex parte communications.

R2-19-109. Consolidation or Severance of Matters

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule provides the basis for consolidation or severance of separate cases.

R2-19-110. Continuing or Expediting a Hearing; Reconvening a Hearing

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule provides the basis for continuing or expediting a hearing, including certain factors that shall be considered by the administrative law judge.

R2-19-111. Vacating a Hearing

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule provides the basis for vacating a hearing from the calendar and return of the case to the original agency.

R2-19-112. Prehearing Conference

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B), and A.R.S. § 41-1092.05(F).

2. Objective:

This rule provides the procedure for requesting a prehearing conference, as well as providing for the administrative law judge's own determination of the need for such a conference. In addition, the rule spells out that the prehearing conference may be telephonic and that a record may be kept of the proceeding.

R2-19-113. Subpoenas

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4), A.R.S. § 41-1092.02(B), and A.R.S. § 41-1092.07(C).

2. Objective:

This rule provides the form for requesting and objecting to subpoenas, as well as the method and requirement of service.

R2-19-114. Telephonic Testimony

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule provides the basis for telephonic testimony. The costs of the testimony must be borne by the party seeking it.

R2-19-115. Rights and Responsibilities of Parties

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule points parties to prehearing preparation issues, such as having witnesses and exhibits ready at the time scheduled.

R2-19-116. Conduct of Hearing

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule describes the hearing procedure from opening statement through witness questioning to closing argument and post-hearing memoranda.

R2-19-117. Failure of Party to Appear for Hearing

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule provides for situations where a party fails to appear for the scheduled hearing.

R2-19-118. Witnesses; Exclusion from Hearing

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule provides for the exclusion of a witness at the discretion of the administrative law judge.

R2-19-119. Proof

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule sets forth the standard of proof, and establishes which party bears the burden of proof in establishing claims, rights, entitlements, affirmative defenses, and grounds for proposed motions.

R2-19-120. Disruptions

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

This rule provides the basis for removing disruptive persons from the hearing.

R2-19-121. Hearing Record

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. Objective:

The rule provides for the transfer of the record to the original agency for duplication and for duplication at any party's request. The rule also provides a method for release of exhibits to the proponent or by court order.

R2-19-122. Notice of Judicial Appeal; Transmitting the Transcript

1. Authorization:

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) , A.R.S. § 41-1092.02(B), and A.R.S. § 12-904.

2. Objective:

This rule provides that a copy of a complaint filed in Superior Court be filed with the Office. In addition, the rule provides the procedure for securing a transcript.

3. Course of Action Proposed by the Office:

A.R.S. § 12-904(A) provides for judicial review of an administrative decision by the filing of a complaint with the Superior Court. A.R.S. § 12-904(B) provides that a party file a notice of the action with the Office of Administrative Hearings, and that the Office thereupon transmit the record. See Appendix 3E-1. In furtherance of A.R.S. § 12-904(A) and (B), R2-19-122 directs parties to file a copy of the complaint filed with the Superior Court with the Office within 10 days of the filing of the complaint. Effective July 1, 2013, A.R.S. § 12-904 substitutes “notice of appeal” for “complaint.” See Appendix 3E-2. The Office will amend R2-19-122 to substitute “notice of appeal” for “complaint” to conform with the statutory change. The Office intends to submit the amended Rule to council by no later than October 2013.