

TO:
Rule 28 Distribution
David K Byers

ATTACHMENT¹

**RULES OF PROCEDURE FOR JUDICIAL REVIEW
OF ADMINISTRATIVE DECISIONS**

Rule 1. Scope of Rules

(a) [No change in text]

Deleted: [No change in text]

(b) Except as provided elsewhere in this rules, the Arizona Rules of Civil Procedure shall not apply to proceedings brought pursuant to title 12, chapter 7, article 6, A.R.S. Unless inconsistent with these rules, the Local Rules of Practice for the superior court in the county in which the action for judicial review of an administrative decision is filed shall apply to proceedings brought pursuant to title 12, chapter 7, article 6, A.R.S.

(c) [Delete]

Rule 2. Time Enlargement; Computation

(a) Upon motion for good cause shown or upon stipulation, the superior court may extend any period of time prescribed either by these rules or by title 12, chapter 7, article 6, A.R.S., including the time for filing an answer notice of appearance or the record on review, but it may not extend the time for the filing of a ~~complaint~~ notice of appeal pursuant to A.R.S. § 12-904.

(b) Computation of Time. Rules 6(a) and (d), Ariz.R.Civ.Proc., shall apply to the computation of any period of time specified or allowed for proceedings subject to these rules.

Rule 3. Stay of an Administrative Decision

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

(a)-(b) [No change in text]

(c) **Judgment Against Surety.** By entering into a bond given pursuant to this rule, the surety submits itself to the jurisdiction of the ~~trial~~ superior court to the same extent and under the same conditions as set forth in Rule 65.1, Ariz.R.Civ.Proc.

Rule 4. Administrative Appeal; When and How Taken; Service

~~Plaintiff's complaint~~ **(a) Notice of Appeal.** Appellant's notice of appeal shall be filed within the time required by A.R.S. § 12-904 or other applicable law and shall be captioned "Complaint-Notice of Appeal for Judicial Review of Administrative Decision." The ~~complaint~~ notice of appeal shall conform to the requirements of A.R.S. §§ 12-904, 12-905, 12-909 and any other applicable law.

(b) Service of Process; Duties of Counsel. The appellant shall serve the notice of appeal upon the agency at its principal office and upon all other defendants. The provisions of Ariz.R.Civ.Proc. 4, 4.1., 4.2 and 5 shall apply.

(c) Notice to Agency of Action. Within ten days after filing the notice of appeal, the appellant shall file a notice of the action with the office of administrative hearings, if applicable, and the agency that rendered the decision, and shall mail a copy of the notice to all other parties to the administrative proceeding at their last known address. The notice shall specify the parties, the court in which the notice of appeal was filed, and the date the notice of appeal was filed.

(d) Joint or Consolidated Appeals. If two or more persons are entitled to file an action for judicial review of an administrative decision and their interests are such as to make a consolidated action practicable, they may file a joint notice of appeal, or may join in the action for judicial review by filing a separate timely notice of appeal and they may thereafter proceed in a single action for judicial review as a single appellant. Actions for judicial review may be consolidated by order of the superior court upon its own motion or upon motion of a party, or by stipulation of the parties to the several actions for judicial review.

(e) Pleadings Generally. All pleadings shall conform to Arizona Rules of Civil Procedure 5.1, 8(a)-(f), 10(a), (b), (c) and (d), and 25(e)(1).

(f) **Scheduling Conference.** The court may conduct a scheduling conference to expedite the disposition of the action, to improve the quality of the review through more thorough preparation, to adjust the time for briefs and arguments set forth in these Rules, and to make such other orders as the court deems appropriate.

(g) **Voluntary Dismissal; By Appellant or by Order of Court; Effect.** An action may be dismissed by order of the court pursuant to a stipulation or dismissal signed by all parties who have appeared in the action. Such an order may be signed by a judge, a duly authorized court commissioner, the clerk of court or deputy clerk. Unless otherwise stated in the notice or order of dismissal, the dismissal is without prejudice, subject to the time limits set forth in A.R.S. § 12-904.

(h) **Involuntary Dismissal; Effect thereof.** For failure of the appellant to prosecute or to comply with these rules or any order of court, an appellee may move for dismissal of the appeal.

Rule 5. Record on Review

(a) [No change in text]

(b) **Preparation and Certification of Transcript.** The transcript of the administrative hearing, or designated portions thereof, shall be included in the record on review if requested by appellant in the notice of appeal or in writing filed by any other party within ten days after that party is served with a notice of appeal.

(1) A party requesting a transcript not already contained in the administrative record of a hearing stenographically reported by a court reporter shall make satisfactory arrangements with the reporter for payment of the cost of the transcript. That party shall file the original transcript with the superior court within thirty days of the request.

(2) A party requesting a transcript not already contained in the administrative record of a hearing created by recording shall obtain a copy of the tape recording from the agency that conducted the hearing and cause a written transcript to be prepared at the requesting party's expense. The requesting party shall file the transcript in the superior court within thirty days of the request.

(c) **Copies to Parties.**

(1) Certification of Record on Review. The agencies responsible for preparing the record on review, shall serve on all parties a copy of the "Certification of Record on Review" at the time it is filed with the court.

(2) Transcript. Any party requesting a hearing transcript pursuant to subsection (b) of this rule shall serve a copy of the transcript upon the other party. If there are multiple parties, the parties shall agree upon whom the transcript shall be served, and that party shall make the copy available for use by the other parties.

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(3) Record on Review. The agency shall serve a copy of the record on review on the appellant. If there are multiple parties, the parties shall agree upon and promptly inform the agency of the party upon whom the agency shall serve the record on review, and that party shall make the copy available for use by the other parties. Any party may obtain additional copies of the record on review from the agency by filing a written request and paying the agency's standard copying fee.

(d) Correction or Modification of the Record on Review. If any controversy arises as to whether the record on review discloses what actually occurred in the agency or agencies, the difference shall be submitted to and settled by the relevant agency and the record made to conform to the truth. If anything material is erroneously omitted from or included in the record on review, the superior court, on motion of any party or on its own initiative, may direct that the record be corrected, and if necessary, that a supplemental record on review be certified and transmitted.

Rule 6. Appellate Briefs; When Filed

(a) Time for Filing Appellate Briefs. The opening brief of plaintiff appellant shall be filed within forty-five days after service of the Certification of Record on Review. The brief of defendant appellee shall be filed within forty-five days after service of plaintiff's appellant's brief. Within twenty days after service of defendant's appellee's brief, plaintiff appellant may file a reply brief.

(b) Consequences of Failure to Timely File Appellate Brief. If plaintiff appellant does not timely file an opening brief, the court, upon notice, may dismiss the complaint notice of appeal. If defendant appellee does not timely file a responsive brief, the appeal may be deemed submitted for a decision upon plaintiff's appellant's opening brief.

Rule 7. Appellate Briefs; Contents

The parties shall file appellate briefs in the following format:

(a) Plaintiff's Appellant's Opening Brief. The opening brief of plaintiff appellant shall concisely and clearly set forth:

1.-3. [No change in text]

4. An argument, which shall contain the contentions of defendant appellee with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record on review relied upon. The argument may include a summary.

5.-6. [No change in text]

(b) Defendant's Appellee's Answering Brief. The answering brief of defendant appellee shall conform to the requirements of subparagraph (a), except that a statement of the case, a statement of the facts or a statement of the issues need not be included unless defendant appellee finds the statements of plaintiff appellant to be insufficient or incorrect.

(c) Plaintiff's Appellant's Reply Brief. Plaintiff Appellant may file a reply brief. The reply shall be confined strictly to rebuttal of points urged in the defendant's appellee's brief.

Rule 8. Appellate Briefs; Length

Plaintiff's Appellant's opening brief and defendant's appellee's answering brief each shall not exceed thirty-five typewritten pages, exclusive of pages containing any table of contents, table of authorities, or appendix. Except by permission of the court, plaintiff's appellant's reply brief shall not exceed fifteen typewritten pages.

Rule 9. Oral Argument

[No change in text]

Rule 10. Admission of New or Additional Evidence

Any party requesting the introduction of new or additional evidence pursuant to A.R.S. § 12-910, shall file a motion identifying the evidence sought to be admitted and setting forth the appropriate legal authority in support of its admission. The moving party shall also address the application of A.R.S. § 12-911(A)(7) to the party's motion. Any party opposing the motion may file a response thereto. The filing of a motion under this rule shall not extend the time for filing briefs as set forth in Rule 6 of these rules.

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Rule 11. Trial De Novo

A party who has demanded a trial de novo in the ~~complaint~~ notice of appeal or answer motion pursuant to A.R.S. § 12-910(B), shall file, prior to the time for filing the opening appellate brief, a motion explaining the need for a trial de novo with citation to legal authority supporting the demand. Any party opposing the motion may file a response thereto.

Rules 12. [No change in text]

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Rules 13-15.

[No change in text].

New rules proposed to add:

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Sanctions

Where the action, any motion, or other conduct is frivolous or taken solely for the purpose of delay, the court may impose such reasonable penalties or damages (including contempt, withholding or imposing costs, or attorneys' fees) as the circumstances may require.

Fees Expenses or Costs

(a) Award of Fees and Expenses to Prevailing Party; Award of Costs to Defendant Agency. The court may award fees and other expenses to a prevailing party other than the defendant agency, in accordance with the provisions of A.R.S. §§ 12-348 and 41-1007. The court may award costs to the prevailing defendant agency, in accordance with the provisions of A.R.S. § 12-912.

(b) Statement of Fees, Expenses or Costs; Objections. A party entitled to fees, expenses or costs may file with the court a sworn itemized statement of fees, expenses or costs on appeal within ten days after entry of judgment. Each adverse party may file objections to the statement of fees, expenses or costs within five days after service of the statement. If no objections are filed, the court may order an award of fees, expenses or costs in accordance with these rules. If objections are filed, the party entitled to fees, expenses or costs may reply within five days after service of the objections. The court shall then determine the amount of fees, expenses or costs to be awarded.

(c) Inclusion of Fees, Expenses or Costs in Judgment. The judgment shall include an itemized statement of fees, expenses or costs awarded pursuant to this rule.