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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-17-

10 **PETITION TO AMEND THE**
11 **RULES OF PROCEDURE FOR**
12 **JUDICIAL REVIEW OF**
13 **ADMINISTRATIVE DECISIONS**

PETITION

14 Pursuant to Rule 28, Arizona Rules of Supreme Court, the State Bar of
15 Arizona (“State Bar”) petitions the Court to amend the Rules of Procedure for
16 Judicial Review of Administrative Decisions (“JRAD”).

17 The amendments proposed in this Petition arose out of the State Bar’s JRAD
18 Rules Study Group (“Study Group”), which the State Bar formed to review and
19 propose amendments to: (i) revise the language to make it consistent with statutory
20 provisions, more clear and concise, (ii) address procedural issues that could be
21 resolved by straightforward changes to the rules, (iii) highlight that under the
22 amended statutes from 2012, an administrative review continues to be an appellate
23 process, and (iv) address any additional issues identified by the Study Group.
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1 proceedings under the administrative procedures act, contested administrative
2 proceedings and the subsequent appeals process. Further, the Interim Director of the
3 Office of Administrative Hearings, a senior counsel for the Office of the Attorney
4 General and counsel for AHCCCS also participated in the Study Group. In addition,
5 the Study Group included two judges from the Superior Court of Arizona in
6 Maricopa County and two from the Arizona Court of Appeals, all of whom have had
7 experience in the hearing of appeals under the JRAD statutes.
8
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10 The State Bar now requests that the Court amend the JRAD rules as discussed
11 below. The proposed changes are attached. Appendix A is a redlined version of the
12 proposed changes and Appendix B is a clean version of the proposed changes.
13 Appendix C contains the proposed forms.
14

15 DISCUSSION

16 The proposed changes to each rule are discussed below.

17 **Rule 1. Scope of Rules**

18 It is recommended that the title to Rule 1 be changed to “Scope of Rules;
19 Applicability of Other Rules; Construction.” This would move the title currently in
20 Rule 15 to Rule 1.
21

22 **Rule 2. Time Enlargement**

23 It is recommended that the title to Rule 2 be changed to “Time Computation.”
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1 This rule now would include references to the appropriate statutes and makes clear
2 that discretion exists generally to enlarge the time for deadlines, except the time to
3 initiate the JRAD appeal, which is non-discretionary by statute. This rule also
4 addresses the service of filings made with the court during a JRAD appeal.
5

6 **Rule 3. Stay of an Administrative Decision**

7 This rule provides the framework for motions to stay, including the
8 identification of the core factors to be addressed and evaluated by the court under
9 the standards governing stays. This language was developed to help guide litigants
10 seeking to stay administrative decisions under the standard announced by the
11 Supreme Court in *Smith v. Arizona Citizens Clean Elections Com'n*, 212 Ariz. 407
12 (2006).
13
14

15 **Rule 4. Administrative Appeal; When and How Taken**

16 It is recommended that the title to Rule 4 be changed to “Administrative
17 Appeal; Content and Timing.” The proposed changes outline what must be included
18 in a notice of appeal, where to file the notice, time for filing, and the process for the
19 notice of appeal to be served.
20

21 **Rule 5. Record on Review**

22 It is recommended that the title to Rule 5 be changed to “Record on Appeal.”
23
24 The proposed changes include language regarding designating a portion or portions
25

1 of the record confidential, detailed direction for preparation and certification of
2 transcript, and language regarding correction or modification of the record.
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5 **Rule 6. Appellate Briefs; When Filed**

6 It is recommended that the title to Rule 6 be changed to “Time for Filing a
7 Brief.” The proposed changes establish presumptive due dates for the briefs to be
8 filed by parties to the JRAD appeal.
9

10 **Rule 7. Appellate Briefs; Contents**

11 It is recommended that the title to Rule 7 be changed to “Contents of Briefs.”
12 The proposed changes organize the headings included in the opening, answering,
13 and reply briefs.
14

15 **Rule 8. Appellate Briefs; Length**

16 It is recommended that the title to Rule 8 be changed to “Length of Briefs.”
17 The proposed changes propose the maximum number of words allowed in the briefs.
18

19 **Rule 9. Oral Argument**

20 No substantive changes to this rule.

21 **Rule 10. Admission of New or Additional Evidence**

22 It is recommended that the title to Rule 10 be changed to “Admission of
23 Exhibits and Testimony Not Offered During Administrative Hearing; Requirement,
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1 Content, Timing and Effect of Motion.” The proposed changes are made to bring
2 this rule in line with the Arizona Rules of Civil Appellate Procedure (“ARCAP”)
3 and organizes the content, time, response, and effect of the motion.
4

6 **Rule 11. Trial De Novo**

7 The proposed changes outline the contents, time, and effect of a motion for a
8 trial de novo.
9

10 **Rule 12. Discovery**

11 The Study Group recommends this rule be deleted. The proposed rules delete
12 references to discovery found in the current rule. The recommendation follows
13 significant analysis and discussion by the Study Group about the merits and reality
14 of the nature of JRAD actions. JRAD actions are appeals. Normally, in appeals,
15 discovery does not occur. This is a point that the Legislature itself intended, as the
16 JRAD statutes make no reference to discovery. While the statutes do permit a party
17 to request the introduction of new evidence, the statutes do not also establish an
18 opportunity to conduct discovery to support that effort. *See* A.R.S. § 12–910(B). At
19 the same time, the proposed rules do not prohibit discovery requests from being
20 made. Under Rule 1(b), the court has the power to permit discovery under its plenary
21 authority to “achieve the just, speedy, and inexpensive resolution of appeals.”
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1 However, because the presumption and default position under the rules assumes that
2 the appeal will be adjudicated on the record, that no new evidence will be admitted,
3 and that a new trial will not be granted, the inclusion of a discovery rule in the JRAD
4 rules created a false impression of discovery's presumptive availability on appeal.
5 However, the judges responsible for much of the experience under the current rules
6 noted that historically, very few discovery requests have been granted.
7

8 **Rule 13. Waiver of Formal Requirements**

9
10 The Study Group recommends this rule be deleted. After deliberating on this
11 rule, the Study Group believed that Rule 1(b)'s admonition that the JRAD Rules
12 should be construed to "achieve the just, speedy, and inexpensive resolution of
13 appeals" satisfactorily addressed the issue.
14

15 **Rule 14. Motions for Reconsideration**

16 In view of the recommendation to delete rules 12 and 13, the Study Group
17 recommends that this rule be re-numbered as rule 12. The Study Group proposed
18 changes to the rule in light of similar changes to ARCAP and suggest that the process
19 be identical or consistent with ARCAP.
20

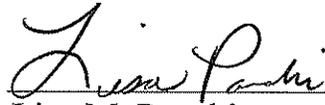
21 **Rule 15. Title**

22 The Study Group recommends this rule be deleted. The language regarding
23 title has moved to Rule 1.
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25

1 **CONCLUSION**

2 The State Bar of Arizona believes that the changes described above will help
3 to clarify and streamline the JRAD Rules and respectfully requests that the Court
4 adopt the proposed changes.
5

6 RESPECTFULLY SUBMITTED this 4th day of January, 2017.
7

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9 
10 _____
11 Lisa M. Panahi
12 Acting General Counsel
13

14 Electronic copy filed with the
15 Clerk of the Arizona Supreme Court
16 this 5th day of January, 2017.

17 by: 
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APPENDIX A

Rule 1. Scope of Rules; Applicability of Other Rules; Construction

(a) Title and Scope. ~~These rules shall govern the procedure in all appeals from administrative decisions taken to the superior court pursuant to title 12, chapter 7, article 6, A.R.S.[‡] These are the Rules of Procedure for Judicial Review of Administrative Decisions. A rule may be cited as “JRAD Rule 00.” These rules govern the procedure in all appeals from final administrative decisions brought to the superior court pursuant to A.R.S. §§ 12-901 to -914.~~

(b) Applicability of Arizona Rules of Civil Procedure. ~~Except to the extent inconsistent with as provided elsewhere in these rules, the Arizona Rules of Civil Procedure and the Local Rules of Practice for the superior court in the county in which an administrative appeal is filed shall do not apply to proceedings held pursuant to title 12, chapter 7, article 6, A.R.S. A.R.S. §§ 12-901 to -914.~~

(c) Applicability of Local Rules of Practice. ~~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 apply to proceedings brought pursuant to A.R.S. §§ 12-901 to -914.~~

~~—(e) Unless otherwise ordered by the court, the following Arizona Rules of Civil Procedure shall not apply to proceedings held pursuant to title 12, chapter 7, article 6, A.R.S.: Rules 16(b), (c) and (f), 16.1(a) (c), (f), and (h), 26-40, and 42(f)(1), Ariz. R. Civ. Proc. In the event new or additional evidence or a trial de novo is permitted by the court, the court shall set forth the manner and method of discovery to be utilized and shall direct which pretrial rules of civil procedure shall apply.~~

(d) Construction. ~~These rules should be used and interpreted by the courts and the parties to achieve the just, speedy, and inexpensive resolution of appeals.~~

[‡]A.R.S. § 12-901 et seq.

Rule 2. Time ~~Enlargement~~Computation; Service

(a) Computation of Time. ~~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 notice of appearance or the record on review, but it may not extend the time for the filing of a notice of appeal pursuant to A.R.S. § 12-904.~~Rule 6(a), Ariz. R. Civ. P., applies to the computation of any period of time specified or allowed for proceedings subject to these rules.

(b) Enlargement of Time. The court for good cause shown may shorten or extend the time for doing any act required by these rules or by A.R.S. §§ 12-901 to -914, except the court may not extend the time for the filing of a notice of appeal.

(c) Service. Any party filing any document, after the filing of the Notice of Appeal, must serve that document on all parties pursuant to Rule 5, Ariz. R. Civ. P.

Rule 3. Stay of an Administrative Decision

(a) Motion for Stay Upon Pending Appeal. A party may file with the clerk of the superior court a motion to stay a final administrative decision, in whole or in part, pending the final disposition of the appeal, pursuant to A.R.S. § 12-911. A The motion for stay of an administrative decision shall not be granted without good cause and without reasonable notice to all parties must be a separate filing from the notice of appeal required by A.R.S. § 12-904. The party filing the motion for stay must provide proper notice to the agency affected and all other parties to the proceeding before the agency. Form 3 is a template for the motion for stay.

(b) Bond on Appeal Standard for Issuance of Stay Pending Appeal. A stay of an administrative decision may be conditioned upon the filing of a bond in superior court by the moving party or upon such other conditions as the court directs. A stay, if granted, shall be effective upon compliance with all conditions imposed by the court. The superior court may grant the motion for stay pending appeal for good cause shown. The motion for stay must address the following:

1. The strong likelihood of success on the merits;
2. The irreparable harm if the stay is not granted;
3. The harm to the requesting party outweighs the harm to the party opposing the stay; and
4. Whether the public policy favors the granting of the stay.

(c) Judgment Against Surety Bond on Appeal. By entering into a bond given pursuant to this rule, the surety submits itself to the jurisdiction of the superior court to the same extent and under the same conditions as set forth in Rule 65.1, Ariz. R. Civ. P. A stay of an administrative decision may be entered in superior court with or without bond, except if otherwise provided by statute.

Rule 4. Administrative Appeal; ~~When and How Taken~~ Content and Timing

~~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 "Notice of Appeal for Judicial Review of Administrative Decision." The notice of appeal shall conform to the requirements of A.R.S. §§ 12-904, 12-905, 12-909 and any other applicable law.~~

(a) Filing a Notice of Appeal. A party to a final administrative decision may take an appeal by filing a "Notice of Appeal for Judicial Review of Administrative Decision" with the clerk of the superior court as permitted by A.R.S. §§ 12-904 to -905. Form 1 is a template for the notice of appeal.

(b) Time for Filing a Notice of Appeal. A party must file a notice of appeal with the clerk of the superior court no later than 35 days from the date when a copy of the final administrative decision from which the party is appealing is served upon the party affected, unless the law provides a different time.

(c) Content of the Notice of Appeal. The notice of appeal must:

1. Include the caption of the case and the administrative agency case number;
2. Identify the party or parties filing the appeal;
3. Designate the final administrative decision from which the party is appealing, including the date of that decision;
4. State the findings and decision or part of the findings and decision sought to be reviewed;
5. State the issues presented for review.
6. Request a trial de novo, if desired, the grant of which is subject to A.R.S. § 12-910, and
7. Be signed by the attorney for the party that is taking the appeal, or by the party if the party has no attorney.

(d) Where To File a Notice of Appeal. The venue specified in the statute authorizing the appeal of the decision controls the venue for an appeal from a final administrative decision. If the venue is not specified, an appeal from a final administrative decision may be filed with the clerk of the superior court of any county in which any of the following conditions arise:

1. Where any part of the hearing or proceeding resulting in the decision of the administrative agency was held;

2. Where any part of the subject matter involved is situated; or

3. Where any part of the transaction giving rise to the proceedings before the administrative agency occurred.

(e) Service of the Notice of Appeal. A party must serve the Notice of Appeal pursuant to Rule 4, Ariz. R. Civ. P.

(f) Proof of Notice of the Commencement of the Appeal. Within 10 days after the party files the notice required by A.R.S. § 12–904(B), the party must file proof of the filing of that notice with the clerk of the superior court. Form 6 is a template of the notice of action.

Rule 5. Record on **ReviewAppeal**

(a) Composition of Record on **ReviewAppeal** and Transmission of Record on **ReviewAppeal**. In filing the record on ~~review-appeal~~ pursuant to A.R.S. § 12–909(B), the administrative agency ~~shall-must~~ file with the record a document entitled “Certification of Record on **ReviewAppeal**” signed by the head of the agency or other person authorized by law. This certification ~~shall-must~~ include an index of all materials contained in the record on ~~review-appeal~~ and ~~shall-must~~ include certification that the materials included in the record on ~~review-appeal~~ are originals or accurate copies. Form 7 is a template of the certification of record on appeal. ~~Where the administrative hearing was stenographically reported or mechanically recorded, the record on review shall also include a transcript of the administrative hearing, or specified portion thereof, when designated as part of the record.~~

(b) Confidential Treatment of the Administrative Record. All portions of the administrative record designated as confidential in proceedings before the agency retain that status unless otherwise ordered by the court. A party may request confidential treatment of any other portion of the record or to unseal any part of the record designated confidential.

(cb) Copies to Parties. The administrative agency ~~shall-must~~ serve on all parties a copy of the “Certification of Record on **ReviewAppeal**” filed with the clerk of the superior court.

(d) Preparation and Certification of Transcript. The transcript of the administrative hearing, or designated portions thereof, must be included in the record on appeal if requested by appellant in the notice of appeal or in writing filed by any other party within 10 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 must make satisfactory arrangements with the reporter for payment of the cost of the transcript. That party must file the original transcript with the superior court within 30 days of the request.

2. A party requesting a transcript not already contained in the administrative record of a hearing created by recording must 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 must file the transcript with the clerk of the superior court within 30 days of the request.

(e) **Correction or Modification of the Record.** On stipulation of the parties, if anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded. The parties must present all other questions about the form and content of the record to the superior court.

Rule 6. ~~Appellate Briefs; When Filed~~ Time for Filing a Brief

(a) Time for Filing Appellate Briefs. ~~The opening brief of appellant shall be filed within forty five days after service of the Certification of Record on Review. The brief of appellee shall be filed within forty five days after service of appellant's brief. Within twenty days after service of appellee's brief, appellant may file a reply brief. Parties must file appellate briefs with the clerk of the superior court as follows:~~

1. Opening Brief. The appellant must file an opening brief within 45 days after service of the Certification of Record on Appeal.

2. Answering Brief. The appellee must file an answering brief within 45 days after service of appellant's brief.

3. Reply Brief. The appellant may file a reply brief within 20 days after service of appellee's brief.

(b) Consequences of Failure to Timely File Appellate Brief. If an appellant does not timely file an opening brief, the court, ~~upon notice, on motion of a party or upon its own motion~~ may dismiss the ~~notice of~~ appeal. If appellee does not timely file ~~a responsive~~ an answering brief, the court may deem the appeal ~~may be deemed~~ submitted for a decision upon ~~appellant's opening brief.~~ the opening brief and the record.

Rule 7. ~~Appellate Briefs;~~ Contents of Briefs

~~The parties shall file appellate briefs in the following format:~~

(a) Appellant's Opening Brief. ~~The opening brief of appellant shall concisely and clearly set forth~~An appellant's opening brief must set forth, under the following headings and in the following order, all of the items listed below:

1. A short "introduction" if desired.

~~2. A short "statement of the case";~~ indicating briefly and concisely the nature of the case, the course of the proceedings and the decision of the administrative agency ~~as to which judicial review is requested~~from which the appeal is taken and the basis of the court's jurisdiction. The statement of the case must include appropriate references to the record.

~~3. A concise "statement of the facts" that are~~ relevant to the issues presented for review, with appropriate references to the record. ~~This statement shall not contain evidentiary matter unless material to a proper consideration of the issues presented, in which instance a reference shall be made to that portion of the record on review where such evidence appears.~~A party may combine a statement of facts with the statement of the case.

~~4. A "statement of the issues" presented for review.~~ The statement of issues presented for review includes every subsidiary issue fairly comprised within the statement.

~~5. An "argument";~~ which shall~~that must~~ contain the appellant's contentions ~~of appellee with respect to the issues~~concerning each issue presented for review, and ~~the~~with supporting reasons ~~therefor~~for each contention; and with citations to the of legal authorities and appropriate references to the portions of the record on which appellant relies. ~~;, statutes and parts of the record on review relied upon.~~ The argument may include a summary.

~~6. A short "conclusion" stating the precise relief sought~~ and a request for attorney's fees, if applicable.

~~6. An appendix if desired.~~

(b) Appellee's Answering Brief. The appellee's answering brief ~~of appellee shall~~must conform to the requirements of subparagraph (a), except that it does not need to include a statement of the case, a statement of the facts, or a statement of the

issues, ~~need not be included~~ unless the appellee finds the appellant's statements of ~~appellant~~ to be insufficient or incorrect.

(c) **Appellant's Reply Brief.** Appellant may file a reply brief. The reply ~~shall~~ must be confined strictly to rebuttal of points ~~urged~~ made in the appellee's answering brief.

Rule 8. ~~Appellate Briefs; Length of Briefs~~

~~Appellant's opening brief and 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, appellant's reply brief shall not exceed fifteen typewritten pages.~~

(a) Opening briefs and answering briefs must not exceed 14,000 words.

(b) Reply briefs must not exceed 7,000 words.

(c) Every brief must be accompanied by a certificate that confirms compliance with the applicable word limit. A party preparing a certificate of compliance may rely on the word count of the word processing system used to prepare the brief if it counts the required words including any footnotes. Form 8 is a template of the certification of word count.

Rule 9. Oral Argument

A party may request oral argument by stating on the first page of the party's brief immediately below the title of the brief "(Oral Argument Requested)", or by filing, no later than ~~ten~~ 10 days after the time for filing the reply brief, a separate instrument requesting oral argument. The court may limit the time for oral argument.

Rule 10. Admission of ~~New or Additional Evidence~~ Exhibits and Testimony Not Offered During Administrative Hearing; Requirement, Content, Timing and Effect of Motion

(a) Motion Required. Any party seeking ~~the introduction of~~ to introduce ~~new or additional evidence~~ exhibits or testimony (or both) not offered during the administrative hearing pursuant to the exceptions contained in A.R.S. § 12-910(A), ~~shall must file a written motion with the clerk of the superior court. , prior to the time for filing appellant's opening brief, 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.~~

(b) Contents of Motion. The motion must identify the evidence sought to be introduced and set forth the appropriate legal authority in support of its admission as required by A.R.S. § 12-910. The moving party also must address the application of A.R.S. § 12-911(A)(7), relating to a remand to the agency, to the party's motion. Form 9 is a template of the motion to introduce additional evidence.

(c) Time for Filing Motion. The motion must be filed within 30 days after the filing of the notice of appeal.

(d) Response to Motion. Any party may file a response to the motion within 10 days after service of the motion.

(e) Effect of Motion. The filing of a motion under this rule does not extend the time for filing briefs as set forth in Rule 6 of these rules.

Rule 11. Trial De Novo

(a) Motion Required. A party who has timely demanded a trial de novo ~~in the notice of appeal or motion pursuant to A.R.S. § 12-910(B), shall must file, prior to the time for filing the opening appellate brief, a written motion with the clerk of the superior court, 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.~~

(b) Contents of Motion. The motion must explain the grounds for the demand and set forth the appropriate legal authority in support of the demand.

(c) Time for Filing Motion. The motion must be filed within 30 days after the filing of the demand for a trial de novo.

(d) Response to Motion. Any party may file a response to the motion within 10 days after service of the motion.

(e) Effect of Motion. The filing of the motion under this rule does not extend the time for filing briefs as set forth in Rule 6 of these rules.

Rule 12. Discovery

~~Only when the court has granted a request under Rule 10 or 11 of these rules, permitting use of new or additional evidence or granting a trial de novo, may discovery be permitted and then only upon motion and for good cause shown and as specifically authorized by order of the court.~~

Rule 13. Waiver of Formal Requirements

~~Upon a showing of exceptional circumstances or lack of training in the law of a party not represented by counsel, the court may extend the time set forth in Rule 5 of these rules for filing of briefs, and may accept a brief or pleading which does not conform to the formal requirements of these rules but which is otherwise legible and understandable, and the court may modify the procedural requirements of these rules in order to insure that a fair and just determination of the administrative appeal on its merits can be made.~~

Rule 1412. Motions for Reconsideration

~~Where the court accepts new evidence on appeal or conducts a trial de novo as provided in Rule 10 or 11 of these rules, a motion for new trial pursuant to Rule 59, Ariz. R. Civ. P., may be filed by any party. In all other cases, any party desiring reconsideration of a decision or order of the superior court which finally disposes of the administrative appeal, except for an order denying a motion for reconsideration, may file a motion for reconsideration pursuant to Rule 7.1, Ariz. R. Civ. P. Accompanying the motion shall be a memorandum which states, with particularity, the points of law or fact which the movant contends the court has decided incorrectly.~~

~~Within 10 days thereafter, an opposing party may file a response to such motion. On a motion for reconsideration, there shall be no oral argument unless otherwise directed by the court. A party seeking reconsideration of a ruling of the superior court may file a motion for reconsideration with the clerk of the superior court. Any motion for reconsideration, and the process for resolving motions for reconsideration, is governed by Rule 7.1, Ariz. R. Civ. P. A motion for reconsideration will not extend the time within which a notice of appeal must be filed from the decision of the superior court.~~

Rule 15. Title

~~These rules shall be known and cited as the Rules of Procedure for Judicial Review of Administrative Decisions.~~

APPENDIX B

Rule 1. Scope of Rules; Applicability of Other Rules; Construction

(a) Title and Scope. These are the Rules of Procedure for Judicial Review of Administrative Decisions. A rule may be cited as “JRAD Rule 00.” These rules govern the procedure in all appeals from final administrative decisions brought to the superior court pursuant to A.R.S. §§ 12–901 to –914.

(b) Applicability of Arizona Rules of Civil Procedure. Except as provided elsewhere in these rules, the Arizona Rules of Civil Procedure do not apply to proceedings held pursuant to A.R.S. §§ 12–901 to –914.

(c) Applicability of Local Rules of Practice. 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 apply to proceedings brought pursuant to A.R.S. §§ 12–901 to –914.

(d) Construction. These rules should be used and interpreted by the courts and the parties to achieve the just, speedy, and inexpensive resolution of appeals.

Rule 2. Time Computation; Service

(a) Computation of Time. Rule 6(a), Ariz. R. Civ. P., applies to the computation of any period of time specified or allowed for proceedings subject to these rules.

(b) Enlargement of Time. The court for good cause shown may shorten or extend the time for doing any act required by these rules or by A.R.S. §§ 12–901 to –914, except the court may not extend the time for the filing of a notice of appeal.

(c) Service. Any party filing any document, after the filing of the Notice of Appeal, must serve that document on all parties pursuant to Rule 5, Ariz. R. Civ. P.

Rule 3. Stay of an Administrative Decision

(a) Motion for Stay Pending Appeal. A party may file with the clerk of the superior court a motion to stay a final administrative decision, in whole or in part, pending the final disposition of the appeal, pursuant to A.R.S. § 12–911. The motion for stay must be a separate filing from the notice of appeal required by A.R.S. § 12–904. The party filing the motion for stay must provide proper notice to the agency affected and all other parties to the proceeding before the agency. Form 3 is a template for the motion for stay.

(b) Standard for Issuance of Stay Pending Appeal. The superior court may grant the motion for stay pending appeal for good cause shown. The motion for stay must address the following:

1. The strong likelihood of success on the merits;
2. The irreparable harm if the stay is not granted;
3. The harm to the requesting party outweighs the harm to the party opposing the stay; and
4. Whether the public policy favors the granting of the stay.

(c) Bond on Appeal. A stay of an administrative decision may be entered in superior court with or without bond, except if otherwise provided by statute.

Rule 4. Administrative Appeal; Content and Timing

(a) Filing a Notice of Appeal. A party to a final administrative decision may take an appeal by filing a “Notice of Appeal for Judicial Review of Administrative Decision” with the clerk of the superior court as permitted by A.R.S. §§ 12–904 to –905. Form 1 is a template for the notice of appeal.

(b) Time for Filing a Notice of Appeal. A party must file a notice of appeal with the clerk of the superior court no later than 35 days from the date when a copy of the final administrative decision from which the party is appealing is served upon the party affected, unless the law provides a different time.

(c) Content of the Notice of Appeal. The notice of appeal must:

1. Include the caption of the case and the administrative agency case number;
2. Identify the party or parties filing the appeal;
3. Designate the final administrative decision from which the party is appealing, including the date of that decision;
4. State the findings and decision or part of the findings and decision sought to be reviewed;
5. State the issues presented for review.
6. Request a trial de novo, if desired, the grant of which is subject to A.R.S. § 12–910, and
7. Be signed by the attorney for the party that is taking the appeal, or by the party if the party has no attorney.

(d) Where To File a Notice of Appeal. The venue specified in the statute authorizing the appeal of the decision controls the venue for an appeal from a final administrative decision. If the venue is not specified, an appeal from a final administrative decision may be filed with the clerk of the superior court of any county in which any of the following conditions arise:

1. Where any part of the hearing or proceeding resulting in the decision of the administrative agency was held;
2. Where any part of the subject matter involved is situated; or

3. Where any part of the transaction giving rise to the proceedings before the administrative agency occurred.

(e) Service of the Notice of Appeal. A party must serve the Notice of Appeal pursuant to Rule 4, Ariz. R. Civ. P.

(f) Proof of Notice of the Commencement of the Appeal. Within 10 days after the party files the notice required by A.R.S. § 12–904(B), the party must file proof of the filing of that notice with the clerk of the superior court. Form 6 is a template of the notice of action.

Rule 5. Record on Appeal

(a) Composition of Record on Appeal and Transmission of Record on Appeal. In filing the record on appeal pursuant to A.R.S. § 12-909(B), the administrative agency must file with the record a document entitled “Certification of Record on Appeal” signed by the head of the agency or other person authorized by law. This certification must include an index of all materials contained in the record on appeal and must include certification that the materials included in the record on appeal are originals or accurate copies. Form 7 is a template of the certification of record on appeal.

(b) Confidential Treatment of the Administrative Record. All portions of the administrative record designated as confidential in proceedings before the agency retain that status unless otherwise ordered by the court. A party may request confidential treatment of any other portion of the record or to unseal any part of the record designated confidential.

(c) Copies to Parties. The administrative agency must serve on all parties a copy of the “Certification of Record on Appeal” filed with the clerk of the superior court.

(d) Preparation and Certification of Transcript. The transcript of the administrative hearing, or designated portions thereof, must be included in the record on appeal if requested by appellant in the notice of appeal or in writing filed by any other party within 10 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 must make satisfactory arrangements with the reporter for payment of the cost of the transcript. That party must file the original transcript with the superior court within 30 days of the request.

2. A party requesting a transcript not already contained in the administrative record of a hearing created by recording must 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 must file the transcript with the clerk of the superior court within 30 days of the request.

(e) Correction or Modification of the Record. On stipulation of the parties, if anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental

record may be certified and forwarded. The parties must present all other questions about the form and content of the record to the superior court.

Rule 6. Time for Filing a Brief

(a) Time for Filing Appellate Briefs. Parties must file appellate briefs with the clerk of the superior court as follows:

1. Opening Brief. The appellant must file an opening brief within 45 days after service of the Certification of Record on Appeal.

2. Answering Brief. The appellee must file an answering brief within 45 days after service of appellant's brief.

3. Reply Brief. The appellant may file a reply brief within 20 days after service of appellee's brief.

(b) Consequences of Failure to Timely File Appellate Brief. If an appellant does not timely file an opening brief, the court, on motion of a party or upon its own motion may dismiss the appeal. If appellee does not timely file an answering brief, the court may deem the appeal submitted for a decision upon the opening brief and the record.

Rule 7. Contents of Briefs

(a) Appellant’s Opening Brief. An appellant’s opening brief must set forth, under the following headings and in the following order, all of the items listed below:

1. A short “introduction” if desired.
2. A “statement of the case” indicating briefly and concisely the nature of the case, the course of the proceedings and the decision of the administrative agency from which the appeal is taken and the basis of the court’s jurisdiction. The statement of the case must include appropriate references to the record.
3. A “statement of the facts” that are relevant to the issues presented for review, with appropriate references to the record. A party may combine a statement of facts with the statement of the case.
4. A “statement of the issues” presented for review. The statement of issues presented for review includes every subsidiary issue fairly comprised within the statement.
5. An “argument” that must contain appellant’s contentions concerning each issue presented for review, with supporting reasons for each contention and with citations of legal authorities and appropriate references to the portions of the record on which appellant relies. The argument may include a summary.
6. A short “conclusion” stating the precise relief sought and a request for attorney’s fees, if applicable.

(b) Appellee’s Answering Brief. The appellee’s answering brief must conform to the requirements of subparagraph (a), except that it does not need to include a statement of the case, a statement of the facts, or a statement of the issues, unless the appellee finds the appellant’s statements to be insufficient or incorrect.

(c) Appellant’s Reply Brief. Appellant may file a reply brief. The reply must be confined strictly to rebuttal of points made in the appellee’s answering brief.

Rule 8. Length of Briefs

(a) Opening briefs and answering briefs must not exceed 14,000 words.

(b) Reply briefs must not exceed 7,000 words.

(c) Every brief must be accompanied by a certificate that confirms compliance with the applicable word limit. A party preparing a certificate of compliance may rely on the word count of the word processing system used to prepare the brief if it counts the required words including any footnotes. Form 8 is a template of the certification of word count.

Rule 9. Oral Argument

A party may request oral argument by stating on the first page of the party's brief immediately below the title of the brief "(Oral Argument Requested)", or by filing, no later than 10 days after the time for filing the reply brief, a separate instrument requesting oral argument. The court may limit the time for oral argument.

Rule 10. Admission of Exhibits and Testimony Not Offered During Administrative Hearing; Requirement, Content, Timing and Effect of Motion

(a) Motion Required. Any party seeking to introduce exhibits or testimony (or both) not offered during the administrative hearing must file a written motion with the clerk of the superior court.

(b) Contents of Motion. The motion must identify the evidence sought to be introduced and set forth the appropriate legal authority in support of its admission as required by A.R.S. § 12–910. The moving party also must address the application of A.R.S. § 12–911(A)(7), relating to a remand to the agency, to the party’s motion. Form 9 is a template of the motion to introduce additional evidence.

(c) Time for Filing Motion. The motion must be filed within 30 days after the filing of the notice of appeal.

(d) Response to Motion. Any party may file a response to the motion within 10 days after service of the motion.

(e) Effect of Motion. The filing of a motion under this rule does not extend the time for filing briefs as set forth in Rule 6 of these rules.

Rule 11. Trial De Novo

(a) Motion Required. A party who has timely demanded a trial de novo must file a written motion with the clerk of the superior court.

(b) Contents of Motion. The motion must explain the grounds for the demand and set forth the appropriate legal authority in support of the demand.

(c) Time for Filing Motion. The motion must be filed within 30 days after the filing of the demand for a trial de novo.

(d) Response to Motion. Any party may file a response to the motion within 10 days after service of the motion.

(e) Effect of Motion. The filing of the motion under this rule does not extend the time for filing briefs as set forth in Rule 6 of these rules.

Rule 12. Motions for Reconsideration

A party seeking reconsideration of a ruling of the superior court may file a motion for reconsideration with the clerk of the superior court. Any motion for reconsideration, and the process for resolving motions for reconsideration, is governed by Rule 7.1, Ariz. R. Civ. P. A motion for reconsideration will not extend the time within which a notice of appeal must be filed from the decision of the superior court.

APPENDIX C

APPENDIX

Rules of Procedure for Judicial Review of Administrative Decisions

Form 1 – Notice of Appeal of Administrative Decision

A.R.S. §§ 12-901(2), 12-904, 12-906, 12-909(A), 12-914, JRAD Rule 4

Distribution:

Clerk of Superior Court – Original
Each Appellee – 1 (served as provided in Rule 4, Ariz. R. Civ. P.)

Time to File: Within 35 days from the date when a copy of the final administrative decision, as defined in A.R.S. § 12-901(2), sought to be reviewed is served upon the party affected.

Attorney or Party Name
State Bar No. (if any)
Law Firm Name (if any)
Complete Mailing Address
Telephone Number
Email Address
Attorney for _____ (party name)

SUPERIOR COURT OF ARIZONA
_____ COUNTY

_____	Appellant(s),	)	Case No. _____
)	
vs.		)	NOTICE OF APPEAL FOR
_____		)	JUDICIAL REVIEW OF
		)	ADMINISTRATIVE DECISION
	Appellee(s).	)	(Administrative Review)
_____)	

Pursuant to A.R.S. § 12-904, [name of Appellant(s)] appeals from the final administrative decision [name of final decision] issued by [name of agency] on [date] in cause no. _____ [agency docket number or case number].

Pursuant to JRAD Rule 4, the following items are included in this Notice of Appeal:

1. The caption of the case and the administrative agency case number are _____.
2. The party or parties filing the appeal are as follows: _____.
3. The final administrative decision from which the party is appealing is _____, which was issued on _____.
4. The findings and decision or part of the findings and decision sought to be reviewed is as follows _____.

5. The issues presented for review are as follows: _____.
6. A request for trial de novo, is/is not requested.

[Appellant requests an award of attorney's fees incurred pursuant to (specify substantive authority that authorizes the fee award).]

DATED this _____ day of _____, 20____

Signature of Attorney or
Self-Represented Party

The following parties appeared before the agency:

Form 2 – Notice of Appearance

A.R.S. §§ 12–907, 12–909(B), 12–914

Distribution:

Clerk of Superior Court – Original

Appellant – 1

Other parties – 1

Time to File: Within 20 days after service of Notice of Appeal upon Appellee

Attorney or Party Name
State Bar No. (if any)
Law Firm Name (if any)
Complete Mailing Address
Telephone Number
Email Address
Attorney for _____ (party name)

SUPERIOR COURT OF ARIZONA
_____ COUNTY

_____)
Appellant,) Case No. _____
)
vs.) NOTICE OF APPEARANCE
)
_____)
)
Appellee.)
_____)

NOTICE is given of the appearance of [attorney name] with the [name of law firm or agency] as counsel for Appellee [name of appellee].

DATED this ____ day of _____, 20__

Signature of Attorney

Copy of the foregoing [mailed/delivered]
this ____ day of _____, 20__, to:

[Attorney or Party Name]

by: _____

Form 3 – Motion for Stay

A.R.S. § 12-911(A)(1)

Distribution:

Clerk of Superior Court – Original

Judge – 1

Each party – 1

Attorney or Party Name
State Bar No. (if any)
Law Firm Name (if any)
Complete Mailing Address
Telephone Number
Email Address
Attorney for _____ (party name)

SUPERIOR COURT OF ARIZONA
_____ COUNTY

_____)
Appellant,) Case No. _____
vs.)
_____) MOTION FOR STAY OF
Appellee.) AGENCY DECISION
_____)

Appellant moves the Court pursuant to A.R.S. § 12-911(A)(1) and JRAD Rule 3 for a stay of decision of [name of agency] of [date of entry] until final disposition of this action for review of that decision. This motion is made for the reasons stated in the attached Memorandum of Points and Authorities.

DATED this _____ day of _____, 20____

Signature of Attorney or
Self-Represented Party

Continued

Form 3 *Continued*

MEMORANDUM OF POINTS AND AUTHORITIES [State procedural background, facts and argument. Pursuant to Rule 3(b), the memorandum must address 1. A strong likelihood of success on the merits; 2. Irreparable harm if the stay is not granted; 3. That the harm to the requesting party outweighs the harm to the party opposing the stay; and 4. That the public policy favors the granting of the stay.]

Signature of Attorney or
Self-Represented Party

Copy of the foregoing [mailed/delivered]
this ____ day of _____, 20__, to:

[Attorney or Party Name]

by: _____

Form 4 – Order Denying Stay

A.R.S. § 12-911(A)(1)

Distribution:

Each party – 1

SUPERIOR COURT OF ARIZONA
_____ COUNTY

_____	Appellant,	)	Case No. _____
)	
vs.		)	ORDER DENYING STAY
_____)	
	Appellee.)	
_____)	

The Court having considered Appellant’s Motion for Stay of Agency Decision in the above-entitled action (and the memorandum filed in support),

IT IS ORDERED denying Appellant’s Motion for the following reasons:

Dated: _____

Judge of the Superior Court

Form 5 – Order Staying Agency Decision

A.R.S. § 12-911(A)(1)

Distribution:

Each party – 1

SUPERIOR COURT OF ARIZONA
_____ COUNTY

_____	Appellant,	)	Case No. _____
)	
vs.		)	ORDER STAYING
_____		)	AGENCY DECISION
)	
	Appellee.)	
_____)	

On motion of Appellant and good cause having been shown,

IT IS ORDERED that the decision of [name of agency] of [date of entry] is stayed insofar as it affects Appellant and that the Appellee is restrained from enforcing that decision against Appellant until final disposition of this action or until further order of this Court.

[IT IS FURTHER ORDERED that this Order is conditioned upon the filing with the clerk of this Court by Appellant of a bond pursuant to A.R.S. § 12-911(A)(1) in the amount of \$_____ to secure Appellee against all damages or loss caused by this Order and for which Appellee may be lawfully entitled to recover compensation.]

Dated: _____

Judge of the Superior Court

Form 6 – Notice of Action

A.R.S. § 12-904(B), JRAD Rule 4(f)

Distribution:

Clerk of Superior Court – Original
Administrative Agency – 1

Each party – 1

Attorney or Party Name
State Bar No. (if any)
Law Firm Name (if any)
Complete Mailing Address
Telephone Number
Email Address
Attorney for _____ (party name)

OFFICE OF ADMINISTRATIVE HEARINGS OR
NAME OF AGENCY

_____))
Appellant,)
vs.)
_____))
Appellee.)
_____)

Case No. _____

NOTICE OF ACTION
(COMMENCEMENT OF THE APPEAL)

[Appellant] gives notice pursuant to A.R.S. § 12–904(B) that Appellant has filed an action pursuant to the Judicial Review of Administrative Decisions Act, A.R.S. §§ 12–901 to – 914 to appeal the decision of [name of agency] dated [date entered].

DATED this _____ day of _____, 20__

Signature of Attorney or
Self-Represented Party

Copy of the foregoing [mailed/delivered]
this _____ day of _____, 20__, to:

[Attorney or Party Name]

by: _____

Form 7: Certification of Record on Appeal

A.R.S. § 12-904(B)

Distribution:

Clerk of Superior Court – Original

Judge – 1

Administrative Agency – 1

Each party – 1

Attorney or Party Name

State Bar No. (if any)

Law Firm Name (if any)

Complete Mailing Address

Telephone Number

Email Address

Attorney for _____ (party name)

SUPERIOR COURT OF ARIZONA

_____ COUNTY

_____)	
	)	Appellant,
	)	Case No. _____
vs.)	
_____)	
)	
	)	Appellee.
_____)	

CERTIFICATION OF
RECORD ON APPEAL

I am the agency head [name of agency] or duly authorized representative, and I certify that:

1. Attached to this Certification is an index of all materials contained in the record on appeal.

2. The materials included in the record on appeal are originals or accurate copies.

The information provided in this Certification is true and complete.

DATED this _____ day of _____, 20__

Signature of Agency Head or
Duly-Authorized Representative

Copy of the foregoing [mailed/delivered]
this _____ day of _____, 20__, to:

[Attorney or Party Name]

by: _____

Form 8: Certification of Word Count
To be included with each brief filed pursuant to JRAD Rule 8

A.R.S. § 12-904(B)

The undersigned certifies that the brief/motion to which this Certificate is attached uses type of at least 14 points, is double-spaced, and contains _____ words.

The document to which this Certificate is attached does not/does exceed the word limit that is set by JRAD Rule 8 as applicable.

The information provided in this Certification is true and complete.

DATED this _____ day of _____, 20____

Signature of Attorney or
Self-Represented Party

Form 9: Motion To Introduce Additional Evidence

A.R.S. § 12-910(A), JRAD Rule 10

Distribution:

Clerk of Superior Court – Original

Judge – 1

Administrative Agency – 1

Each party – 1

Attorney or Party Name
State Bar No. (if any)
Law Firm Name (if any)
Mailing Address
City, State, Zip Code
Telephone Number
Email Address
Attorney for _____ (party name)

SUPERIOR COURT OF ARIZONA
_____ COUNTY

_____)
Appellant,) Case No. _____
)
vs.)
_____) MOTION TO INTRODUCE
) ADDITIONAL EVIDENCE
)
Appellee.)
_____)

[Appellant/Appellee] moves the Court pursuant to A.R.S. § 12-910(A) to introduce exhibits and testimony not offered during the Administrative Hearing in addition to the relevant and admissible exhibits and testimony contained in the record of [name of agency] filed in this Court. The additional evidence sought to be introduced is described and the reasons why this Motion may be granted are stated in the attached Memorandum of Points and Authorities.

DATED this _____ day of _____, 20__

Signature of Attorney or
Self-Represented Party

Copy of the foregoing [mailed/delivered]
this _____ day of _____, 20__, to:

[Attorney or Party Name]

by: _____