DIVISION ONE
FILED: 7/31/2018
AMY M. WOOD,
CLERK
BY: pjl

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN THE MATTER OF: ARIZONA DEPARTMENT OF ECONOMIC SECURITY'S OBLIGATION TO TRANSMIT TO THE ARIZONA COURT OF APPEALS APPLICATIONS FOR APPEAL, PROVIDE INFORMATION AND CEASE PURGING RECORDS, AND APPOINTMENT OF PRO BONO COUNSEL IN ALL DEPARTMENT-DELAYED APPLICATIONS ACCEPTED BY COURT	)	ADMINISTRATIVE ORDER 2018-05

¶1 Pursuant to Arizona Revised Statutes (A.R.S.) section 12-120.04, the Chief Judge has the authority to exercise administrative supervision over this Court, including matters relating to the timely processing of appeals for which the Court has jurisdiction, such as the applications for appeal discussed herein. The Arizona Department of Economic Security (ADES) has a process to administratively resolve disputes arising out of unemployment compensation, food stamp and cash assistance programs. A party may challenge a final administrative decision by filing an application for appeal with ADES. When that happens, ADES is required by statute to transmit the application for appeal and related documents (including a transcript) to this Court. *See* A.R.S. §§ 41-1993; 23-674(A).

¶2 In recent years, ADES failed to fulfill that obligation, resulting in this Court holding ADES in contempt for its failure to comply with Administrative Order 2017-01

(issued Feb. 13, 2017) and issuing Administrative Order 2017-03. *See, e.g., In re Ariz. Dep't of Econ. Sec.'s Compliance with Admin. Order 2017-01*, 1 CA-UB 17-0128, 2017 WL 4784584 (Ariz. App. Oct. 24, 2017) (mem. dec.); Administrative Order 2017-03 (issued Nov. 8, 2017).

¶3 "Weighing the totality of the circumstances," an opinion by this Court issued the same date as this Administrative Order "hold[s] that the delayed transmission of the applications for appeal [by ADES] uniformly deprived the applicants of procedural due process they were entitled to receive." *Gallarzo v. Ariz. Dep't of Econ. Sec.*, 1 CA-UB 17-0004, et al., at ¶ 14 (Ariz. App. July 31, 2018). The *Gallarzo* opinion imposes on ADES ongoing obligations and indicates pro bono counsel should be appointed in all pending and future cases where the Court accepts an ADES-delayed application for appeal. The *Gallarzo* opinion further indicates that this Court would issue an administrative order setting forth those requirements. This is that Administrative Order. Based on the foregoing,

¶4 **IT IS ORDERED** that, until further written Order of this Court, Administrative Orders 2017-03 (issued Nov. 8, 2017) and 2017-01 (issued Feb. 13, 2017) remain in full force and effect.

¶5 **IT IS FURTHER ORDERED** that, for a period of four years from the date of this Administrative Order, ADES shall notify this Court in writing of any changes in the training plans it has implemented to remediate the delays referenced above and prevent their recurrence as well as any investigations (or of the institution of any new

investigation) concerning the mishandling or failure to properly process applications for appeal in these administrative proceedings.

¶6 **IT IS FURTHER ORDERED** that ADES shall immediately cease any practice of purging record items relevant to any pending applications for appeal until such time as ADES may establish that its storage and retention policies create no risk of prejudice to applicants.

¶7 **IT IS FURTHER ORDERED** that pro bono counsel will be appointed, through the Arizona Court of Appeals Pro Bono Representation Program, in all pending and future cases in which the Court accepts an ADES-delayed application for appeal. This applies to all pending cases in which the Court has accepted the application as of the date of this Administrative Order, except that it does not apply to resolved cases and it does not apply if the Court determines that the benefit of the appointment is outweighed by the delay that the appointment would cause in the resolution of a particular case.

¶8 **IT IS FURTHER ORDERED** that the Clerk of the Court shall distribute this Order to Mark Brnovich, Arizona Attorney General; Carol A. Salvati, Assistant Attorney General, Arizona Attorney General's Office; Michael Trailor, Director, Arizona Department of Economic Security; and Clerk, Arizona Department of Economic Security Appeals Board.

Samuel A. Thumma, Chief Judge
Arizona Court of Appeals, Division One