



ARIZONA BOARD OF FINGERPRINTING

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Final Minutes for Public Meeting

Held February 9, 2007, at 8:30 a.m.

3839 North 3rd Street, Suite 101, Phoenix, Arizona

Board Members

Mike LeHew, Department of Economic Security, Chair
Kim Pipersburgh, Department of Health Services, Vice Chair
Rand Rosenbaum, Administrative Office of the Courts
Charles Easaw, Department of Education
Arthur W. Baker, Department of Juvenile Corrections

Executive Director

Dennis Seavers

CALL TO ORDER AND ROLL CALL

Mr. LeHew called the meeting to order at 10:41 a.m. The following Board members were present: Mike LeHew, Kim Pipersburgh, Rand Rosenbaum, Charles Easaw, and Arthur W. Baker. No Board members were absent.

Also in attendance were Dennis Seavers, Executive Director, and Christopher A. Munns, Assistant Attorney General.

CALL TO THE PUBLIC

Mr. LeHew made a call to the public. There were no members of the public present.

MINUTES

Mr. LeHew referred the Board members to the draft minutes, including executive-session minutes, from the January 26, 2007, meeting.

Ms. Pipersburgh made a motion to approve the minutes, including executive-session minutes, from the January 26, 2007, meeting. Mr. Baker seconded the motion, which passed, 5–0.

BOARD POLICY ON POST-HEARING ACTIVITIES

Mr. Seavers referred Board members to his January 29, 2007, memo on Board decisions following administrative hearings (see Attachment 1). He also referred Board members to an e-mail from the Arizona Education Association on the policy changes proposed by the memo (see Attachment 2).

Ms. Pipersburgh moved that the Board go into executive session pursuant to A.R.S. § 38–431.02(A)(3) to receive legal advice from the assistant attorney general (“AAG”). Mr. Rosenbaum seconded the motion, which passed, 5–0. The Board entered into executive session at 10:47 a.m.

The Board emerged from executive session at 10:59 a.m. The Board discussed how to interpret A.R.S. § 41–619.55(D). Mr. Baker wondered whether allowing applicants to testify telephonically might prevent them from having to travel to Phoenix twice, once for the administrative hearing and then again for the Board decision. Mr. Seavers wondered whether applicants could waive their right to appear at the Board deliberations. He explained that he was concerned that if the Board interpreted its statute to mean that the applicant must appear at the hearing in order for the Board to conduct deliberations, then the applicant could continually fail to appear, and the Board could never conclude the case.

Mr. Easaw requested clarification on what was meant by the terms “the first hearing” and “the second hearing.” Mr. Seavers explained that the first hearing, which historically had been called “the hearing,” was before the hearing officer, who would later prepare recommended findings of fact and conclusions of law and a recommended decision. “The second hearing” would refer to the Board’s deliberations on the hearing officer’s recommendation. Historically, these deliberations had taken place without the applicant being present.

Mr. Baker moved that the Board go into executive session pursuant to A.R.S. § 38–431.02(A)(3) to receive legal advice from the AAG. Mr. Rosenbaum seconded the motion, which passed, 5–0. The Board entered into executive session at 11:05 a.m.

The Board emerged from executive session at 11:16 a.m. Mr. Seavers suggested that the Board, when deciding how to interpret the statute on who appears at a hearing, consider that there are different requirements among agencies on whether applicants can continue working without a fingerprint clearance card. Although many agencies will not allow applicants to continue working while their good-cause-exception applications are pending, some will. If the Board

cannot finalize a case without the applicant appearing, the person could continue working for long periods without a fingerprint clearance card.

Mr. Baker made a motion to adopt the policy proposed in Section II of the memo, except that applicants will be allowed but not required to appear at the hearing phase. Mr. Rosenbaum seconded the motion, which passed, 5–0.

Regarding Section III of the memo, Mr. Seavers noted that the Board may want to consider how it will handle cases where individuals attempt to submit new evidence after the first hearing and before or at the Board review. Mr. Munns said that accepting new evidence would be problematic and would undermine the purpose of having a hearing officer. Mr. Seavers noted that applicants, perhaps confused about the process, will bring in documents to the second phase of the hearing and may want to introduce the documents as evidence. Mr. Munns explained that the Board should limit itself to the evidence in the administrative record. He suggested that the Board's process for rehearing or review would allow certain new evidence to be admitted, and he added that the Board could remand cases to the hearing officer if considering new evidence is appropriate. However, the Board generally should focus only on the evidence in the administrative record and not allow applicants to submit new evidence. Otherwise, he explained, the case would be difficult to conclude because new evidence could continually be submitted. Mr. Baker said that Board members need to have time to review the evidence, so accepting new evidence at the hearing may be inappropriate.

Mr. Baker made a motion to adopt the policy proposed in Section III of the memo, except that applicants must submit exceptions, objections, or evidence at least 10 days before the Board review, and that applicants will not be allowed to speak. Ms. Pipersburgh seconded the motion. Mr. Munns suggested that if the Board accepts new evidence, the case should be remanded to the hearing officer. He said that if the Board accepts new evidence, the hearing officer's recommendation basically is no longer useful because the hearing officer would not have seen the evidence. Mr. Munns recommended that the Board simply not accept new evidence after the administrative hearing. He noted that this practice is the standard, and accepting evidence after the hearing would be an anomalous practice.

Mr. Easaw said that he opposed a restriction on new evidence submitted after the first hearing. Mr. Munns pointed out that allowing evidence to be accepted after the hearing might prompt applicants to decide to skip the hearing and just present evidence directly to the Board.

Mr. Baker withdrew his motion, and Ms. Pipersburgh concurred. Mr. Baker made a motion to adopt Section III of the memo, except that the Board would allow applicants to appear at the second phase of the hearing but not speak and would allow applicants to submit written exceptions or objections to the hearing officer's recommendation. Applicants would not be allowed to submit new evidence after the first hearing. Ms. Pipersburgh seconded the motion, which passed 5–0.

Mr. Easaw made a motion to recess for five minutes, and Ms. Pipersburgh seconded. The motion passed, 5–0. Mr. LeHew adjourned the meeting at 12:09 p.m. After a recess, Mr.

Rosenbaum made a motion to resume the meeting, and Ms. Pipersburgh seconded. The motion passed, 5–0. The meeting resumed at 12:20 p.m.

Mr. Seavers suggested that the Board adopt a policy of following the procedures suggested in the January 29, 2007, memo, Attachments A–C. Mr. Easaw made a motion to adopt in policy the procedures described in Attachments A–C of the memo. Ms. Pipersburgh seconded the motion, which passed, 5–0.

Mr. Seavers explained that the Board was working through a backlog of cases where the applicant had appeared at a hearing. Mr. Seavers noted that he would be discussing progress toward resolving the backlog later in the meeting. However, he said that the Board might want to consider how the adopted policy changes might affect the backlog. His projections for resolving the backlog would be significantly affected by the new policies and procedures. Mr. Seavers noted that the Board could go against legal advice and exempt certain backlogged cases from the new procedures. Mr. Seavers emphasized that he was not recommending that the Board exempt backlogged cases but that projections for resolving those cases would be affected by the new procedures.

Mr. Baker expressed concern about the Board members' liability if they act outside of the bounds of law. Mr. LeHew suggested that the Board go back into executive session to solicit the advice of the AAG.

Mr. Baker moved that the Board go into executive session pursuant to A.R.S. § 38–431.02(A)(3) to receive legal advice from the AAG. Mr. Easaw seconded the motion, which passed, 5–0. The Board entered into executive session at 12:30 p.m.

The Board emerged from executive session at 12:34 p.m. Mr. Baker made a motion to make a transition to the new policies and procedures by applying them to cases that had administrative hearings after December 31, 2006. Ms. Pipersburgh seconded the motion, which passed 5–0.

AUDIT REPORT

Mr. Easaw moved that the Board go into executive session pursuant to A.R.S. § 38–431.03(A)(2) to discuss the performance-audit report provided by the Office of the Auditor General. Mr. Rosenbaum seconded the motion, which passed, 5-0. The Board entered into executive session at 12:44 p.m.

The Board emerged from executive session at 12:50 p.m.

EXECUTIVE DIRECTOR'S REPORT

Prior to the executive director presenting his report, the Board chairman, on behalf of the Board, commended Mr. Seavers for his work on responding to the audit report. Mr. LeHew requested that the minutes reflect that Mr. Seavers did an outstanding job throughout the audit.

Mr. Seavers referred the Board members to his report on the year-to-date expenditures and revenues (see Attachment 3). He noted that the Board is well within its budgeted expenditures.

Mr. Seavers referred Board members to his report on the strategic-plan performance through the second quarter (see Attachment 4).

Mr. Seavers referred Board members to his February 6, 2007, memo on legislation (see Attachment 5).

Mr. Seavers referred Board members to the floor plans for the Board's new office and described the space (see Attachment 6). He said that the Board would move to the new location at the end of the month.

ADJOURNMENT

Ms. Pipersburgh made a motion to adjourn the meeting, and Mr. Rosenbaum seconded. The motion passed, 5-0. Mr. LeHew adjourned the meeting at 1:10 p.m.

Minutes approved on April 20, 2007

Dennis Seavers, Executive Director

Arizona Board of Fingerprinting

Memo

TO: Board members and alternates
FROM: Dennis Seavers
C: Christopher Munns
Date: January 29, 2007
SUBJECT: Board decisions following administrative hearings



The Board's assistant attorney general ("AAG") has recently advised the Board to make changes to how it handles good cause exceptions following an administrative hearing. This memorandum proposes a process for the Board to follow; some of the steps are already being followed, but I describe them here for the sake of clarity. The Board may want to adopt this or a similar process at its next business meeting.

I. EXPEDITED REVIEW

An expedited review is a review of the application package that an applicant submits without him or her being present.¹ The Board may either (1) grant a good cause exception under an expedited review or (2) refer the applicant to an administrative hearing.² When deciding whether to grant a good cause exception under an expedited review, the Board must consider whether the applicant has shown to the Board's satisfaction that he or she is not a recidivist, is successfully rehabilitated, and has not been convicted of any offense listed in A.R.S. § 41-1758.03(B) (sometimes called the list of nonappealable offenses). The Board also must consider the criteria listed in A.R.S. § 41-619.55(E).³ For your reference, these criteria appear below.

1. The extent of the person's criminal record;
2. The length of time that has elapsed since the offense was committed;
3. The nature of the offense;
4. Any applicable mitigating circumstances;
5. The degree to which the person participated in the offense;
6. The extent of the person's rehabilitation, including:
 - a. Completion of probation, parole, or community supervision;
 - b. Whether the person paid restitution or other compensation for the offense;
 - c. Evidence of positive action to change criminal behavior, such as completion of a drug-treatment program or counseling;
 - d. Personal references attesting to the person's rehabilitation.

¹ A.R.S. § 41-619.51(3).

² A.R.S. § 41-619.55(B).

³ A.R.S. § 41-619.55(C).

II. HEARING

When the Board determines that an applicant must appear at an administrative hearing, the executive director schedules the hearing and gives the applicant proper notice. Notice must be given at least 20 days in advance of the hearing.⁴ The hearing is conducted by a hearing officer—either the Board’s full-time hearing officer or, if necessary, another hearing officer, such as the executive director or an administrative law judge from the Office of Administrative Hearings.⁵ This hearing must be recorded manually or by recording device.⁶

After the hearing officer conducts the hearing, he or she recommends findings of fact, conclusions of law, and a decision. Within 30 days, if possible, the Board will review and make a decision on this recommendation. The date that the Board reviews the recommendation will depend on the Board’s meeting schedule.

When the hearing officer’s recommendation is ready, the executive director gives the applicant notice that the Board will be reviewing the recommendation. Notice must be given at least 20 days in advance of the Board’s scheduled meeting.⁷ The notice includes a copy of the hearing officer’s recommendation. Although the applicant was required to appear at the hearing, he or she will not be required to appear at the Board’s review.

The executive director sends the recommendation to the Board members at the same time that he or she sends the notice.

III. BOARD REVIEW AND DECISION

The Board meets on regularly scheduled dates (currently every other Friday) to consider recommendations from the hearing officer. The applicant may appear at the review. The Board may decide to hear arguments from the applicant, limited to a specific period of time (e.g., five minutes); or the Board may decide not to hear arguments. However, the applicant’s notice should indicate whether the Board will accept testimony or additional documentation, and, if allowed, how much time will be allotted for arguments.⁸ Therefore, the Board should adopt a policy on accepting testimony and other evidence at its review.

The Board should consider only the administrative record in the case. This record must include the following.

1. All pleadings, motions, and interlocutory rulings;
2. Evidence received or considered;
3. A statement of matters officially noticed;
4. Objections, offers of proof, and rulings on the objections and offers;
5. Proposed findings and exceptions;

⁴ A.R.S. § 41-1061(A).

⁵ A.R.S. § 41-619.55(B).

⁶ A.R.S. § 41-1061(F). See also *Walker v. De Concini*, 86 Ariz. 151-53, 341 P.2d 939-40.

⁷ A.R.S. § 41-1061(A). The Board determination is considered an extension of the administrative hearing, according to the AAG.

⁸ A.R.S. § 41-1061(B)(1).

6. Any decision, opinion, or report by the hearing officer;
7. All staff memorandums, other than privileged communications, or data submitted to the hearing officer related to the case.⁹

To the degree appropriate and possible, the Board should conduct its deliberations openly, while preserving the confidentiality required for good-cause-exception determinations.¹⁰ If the applicant appears for the review, he or she should be allowed to be present while the Board deliberates on the applicant's case. Whether or not the applicant appears, a recording of the Board's deliberations should be made.¹¹

The Board may accept, reject, or modify the hearing officer's recommendation. The Board should make separate motions for each of the three major sections of the recommendation: the findings of fact, the conclusions of law, and the decision. Below is an explanation of the options the Board has, depending on whether it agrees with the recommendation and whether there is consensus among the Board members.

Accept the recommendation

If the Board agrees with the entire recommendation, it should make three motions: (1) to accept the recommended findings of fact, (2) to accept the recommended conclusions of law, and (3) to accept the recommended conclusions of law. A majority of the quorum is required to pass the motions to accept the findings of fact and conclusions of law. If the Board accepts a recommendation to approve a good cause exception, the decision must be unanimous; but only a majority of the quorum is required to accept a recommendation to deny a good cause exception.¹²

A sample motion to accept the recommendation appears in Attachment A.

Modify or reject the recommendation

If the Board disagrees with the recommendation, in whole or part, it should still make three motions—one each for the findings of fact, conclusions of law, and decision. Motions to modify or reject the findings of fact or conclusions of law should describe the specific changes to the findings. Additionally, the motion should explain the basis for the modification or rejection; it is not enough just to describe the changes to be made. Modifications to the findings of fact must contain specific references to the administrative record that support the change. The motions should be made with enough detail to allow the executive director to prepare an order that accurately reflects the Board's wishes. When the Board modifies or rejects the recommended findings of fact, it must review the entire administrative record, including the recorded hearing.¹³

⁹ A.R.S. § 41-1061(E).

¹⁰ The requirement for confidentiality appears in A.R.S. § 41-619.54.

¹¹ A.R.S. § 41-1061(F).

¹² A.R.S. § 41-619.53(B).

¹³ *Stoffel v. Department of Economic Security*, 162 Ariz. 449, 451, 784 P.2d 275, 277.

Motions to modify or reject the recommended findings of fact or conclusions of law require a majority of the quorum to pass. A unanimous vote is required to reject a recommended decision to deny a good cause exception and instead grant the good cause exception.¹⁴ But only a majority of the quorum is necessary to reject a recommended decision to grant a good cause exception.

Sample motions to modify or reject the recommendation appear in Attachment B.

IV. REHEARING OR REVIEW OF APPLICATIONS THAT THE BOARD DENIED

When the Board members grant or deny a good cause exception application, the Board staff notifies the applicant of the decision by first-class and certified mail.¹⁵ If the applicant disagrees with the Board's decision, he or she has 30 days from the date that the decision is served to submit a written request for review or rehearing.¹⁶ This request must specify the grounds for rehearing or review and provide reasonable evidence that the applicant's rights were materially affected.¹⁷

Upon receiving a request for review or rehearing, the Board's executive director determines an appropriate date for the Board to review the request. (This determination would be based on the Board's schedule of meetings.) The executive director gives the applicant notice at least 20 days before the meeting.¹⁸ The applicant may appear at the Board meeting and may present arguments in favor of the request. The Board may limit the amount of time for argument and should indicate the allotted time in the notice. The Board should consider adopting a policy that sets the time for arguments. The executive director gives the Board members a copy the applicant's request; the hearing officer's recommended findings of fact, conclusions of law, and decision; and the Board's order. The executive director indicates to the Board members whether the applicant's request was timely. If the executive director determines that the request is not timely, he should explain the basis for this determination; in addition, he should indicate in the applicant's notice that he is informing the Board that the request was not timely.¹⁹

To the degree appropriate and possible, the Board should conduct its deliberations openly, while preserving the confidentiality required for good-cause-exception determinations. If the applicant appears for the review, he or she should be allowed to be present while the Board deliberates on the applicant's case. Whether or not the applicant appears, a recording of the Board's deliberations should be made.²⁰

The Board must grant a rehearing or review for any of the following reasons that materially affect the applicant's rights.

¹⁴ A.R.S. § 41-619.53(B).

¹⁵ A.A.C. R13-11-111(A).

¹⁶ A.A.C. R13-11-110(A).

¹⁷ A.A.C. R13-11-110(B).

¹⁸ A.R.S. § 41-1061(A).

¹⁹ A.R.S. § 41-1061(G).

²⁰ A.R.S. § 41-1061(F).

1. The findings of fact, conclusion of law, or decision are not supported by the evidence or are contrary to law;
2. The applicant was deprived of a fair hearing due to an irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;
3. Newly discovered evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been produced earlier;
4. Error in the admission or rejection of evidence or other errors of law occurring at the hearing.²¹

If the Board grants a rehearing or review, the rehearing or review must only address the issue on which the Board's original decision was found to be erroneous.²² The Board may, on its own or by using a hearing officer, take additional testimony. The Board may also amend or make new findings of fact or conclusions of law. Finally, the Board may affirm, modify, or reverse its original decision.²³

The Board's order in response to the request for rehearing or review must specify the basis for the order.²⁴ The Board should make a motion with enough detail to allow the executive director to prepare an order that accurately reflects the Board's wishes.

Sample motions responding to a request for rehearing or review appear in Attachment C.

V. SUBSEQUENT EVENTS

If the Board affirms a denial or rejects the applicant's request for rehearing or review, the applicant may file for judicial review in superior court within 35 days from the service date of the Board's decision.²⁵ The Board's involvement in these judicial reviews typically would be limited to responding to court orders or considering settlements. The Board's actions in the judicial reviews would be guided by the advice of the AAG.

²¹ A.A.C. R13-11-110(A).

²² A.A.C. R13-11-110(D).

²³ A.A.C. R13-11-110(C).

²⁴ A.A.C. R13-11-110(D).

²⁵ A.R.S. § 12-904(A).

ATTACHMENT A
Sample Motion to Adopt Hearing Officer's Recommendation

After deliberation is complete, the chairperson would begin by calling for a motion.

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board adopt the hearing officer's recommended findings of fact.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended conclusions of law.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended decision.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The motion passes. The application for a good cause exception has been granted (or denied).

ATTACHMENT B

Sample Motions to Reject or Modify Hearing Officer's Recommendation

After deliberation is complete, the chairperson would begin by calling for a motion.

Motion that amends the hearing officer's recommended findings of fact but adopts the recommended conclusions of law and decision

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board adopt the hearing officer's recommended findings of fact, except that the Board amend the findings of fact in the following way. [The Board member should then make clear how the findings of fact are being amended and should propose the specific language that will be amended.] The reason (or reasons) for amending the findings of fact is (or are) [The Board member should then state the grounds for the amendment.] For the record, the Board has reviewed the entire administrative record.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended conclusions of law.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Sample motions to reject or modify hearing officer's recommendation

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended decision.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The motion passes. The application for a good cause exception has been granted (or denied).

Motion that modifies the hearing officer's recommended conclusions of law but adopts the recommended findings of fact and decision

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board adopt the hearing officer's recommended findings of fact.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended conclusions of law, except that the Board modify the conclusions of law in the following way. [The Board member should then make clear how the conclusions of law are being modified and should propose the specific language to make the modification.] The reason (or reasons) for modifying the conclusions of law is (or are) [The Board member should state the grounds for the modification.]

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended decision.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Sample motions to reject or modify hearing officer's recommendation

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The motion passes. The application for a good cause exception has been granted (or denied).

Motion that adopts the hearing officer's recommended findings of fact but modifies the conclusions of law and rejects the recommended decision.

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board adopt the hearing officer's recommended findings of fact.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended conclusions of law, except that the Board modify the conclusions of law in the following way. [The Board member should then make clear how the conclusions of law are being modified and should propose the specific language to make the modification.] The reason (or reasons) for modifying the conclusions of law is (or are) [The Board member should then state the grounds for the modification.]

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board reject the hearing officer's recommended decision and instead deny (or grant) the application for a good cause exception. The reason (or reasons) for the rejection is (or are) [The Board member should then state the grounds for the rejection.]

Chairperson: A motion has been made. Is there a second?

Sample motions to reject or modify hearing officer's recommendation

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The motion passes. The application for a good cause exception has been denied (or granted).

Motion that adopts the hearing officer's recommended findings and conclusions of law but rejects the recommended decision.

This situation would arise when a minority of the quorum does not want to grant the applicant a good cause exception.

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board adopt the hearing officer's recommended findings of fact.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended conclusions of law.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended decision.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The vote is four in favor, one opposed. [The correct vote should be reported.] A unanimous

Sample motions to reject or modify hearing officer's recommendation

vote is required to grant a good cause exception. As a matter of law, the good cause exception has been denied.

ATTACHMENT C

Sample Motions Responding to a Request for Rehearing or Review

After deliberation is complete, the chairperson would begin by calling for a motion.

Motion that rejects the request for rehearing or review because the request was not timely

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board make the following findings of fact. The date of service of the Board's decision was [date]. The date the applicant submitted the request for rehearing or review was [date]. The difference between these two dates was [number of days].

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board make the following conclusions of law.

1. Under Arizona Administrative Code ("A.A.C.") R13-11-110(A), a request for rehearing or review must be submitted in writing within 30 days from the date of service of the Board's decision.
2. The applicant's request did not comply with the 30-day requirement of A.A.C. R13-11-110(A).
3. Based on the above factors, the Board has grounds to reject the applicant's request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Sample motions responding to a request for rehearing or review

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying “Yes” or “Aye.”] All opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board reject the applicant’s request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board’s executive director or another staff member will call the roll. The Board members in favor respond by saying “Yes” or “Aye.” The Board members opposed respond by saying “No” or “Nay.”] The motion passes. The request for rehearing or review has been rejected.

Motion that rejects the request for rehearing or review because the request does not meet the requirements of A.A.C. R13-11-110

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board make the following findings of fact.

1. The Board denied the applicant's good cause exception on October 1, 2006.
2. Following the Board's denial, the applicant submitted a timely request for review or rehearing under Arizona Administrative Code ("A.A.C.") R13-11-110(A). This request did not specify the grounds for the rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board make the following conclusions of law.

1. Under A.A.C. R13-11-110(B), the applicant's request must specify the grounds for the rehearing or review and must provide reasonable evidence that the applicant's rights were materially affected.
2. Based on the above factor, the Board has grounds to reject the applicant's request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Sample motions responding to a request for rehearing or review

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying “Yes” or “Aye.”] All opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board reject the applicant’s request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board’s executive director or another staff member will call the roll. The Board members in favor respond by saying “Yes” or “Aye.” The Board members opposed respond by saying “No” or “Nay.”] The motion passes. The request for rehearing or review has been rejected.

Motion that denies the request for rehearing or review based on the merits of the request

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board make the following findings of fact.

1. The Board denied the applicant's good cause exception on October 1, 2006. As indicated in the Board's order, the Board denied applicant's good cause exception in part because the applicant failed to submit documentary proof that he completed the sentence from his April 2, 2004, offense.
2. Following the Board's denial, the applicant submitted a timely request for review or rehearing under Arizona Administrative Code ("A.A.C.") R13-11-110(A).
3. The applicant's request for rehearing or review includes documentation that shows he completed the sentence for his 2004 offense. The applicant claimed that this new evidence could have had a bearing on the Board's decision. However, the applicant did not submit this documentation prior to the Board's decision to deny his (or her) good cause exception.
4. The applicant could have produced the documentation showing he completed his sentence before the Board made its decision if the applicant had exercised reasonable diligence.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All

Sample motions responding to a request for rehearing or review

opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board make the following conclusions of law.

1. Under A.A.C. R13-11-110(C), the Board may grant a request for rehearing or review if the applicant shows that his (or her) rights were materially affected and provides newly discovered evidence that could have a bearing on the Board’s decision and that, with reasonable diligence, could not have been discovered or produced earlier.
2. The evidence that the applicant submitted does not meet the requirements of A.A.C. R13-11-110(A)(3).
3. Based on the above factors, the Board has grounds to deny the applicant’s request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying “Yes” or “Aye.”] All opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board deny the applicant’s request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board’s executive director or another staff member will call the roll. The Board members in favor respond by saying “Yes” or “Aye.” The Board members opposed respond by saying “No” or

Sample motions responding to a request for rehearing or review

“Nay.”] The motion passes. The request for rehearing or review has been denied.

Motion that grants the request for rehearing

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board make the following findings of fact.

1. The Board denied the applicant's good cause exception on October 1, 2006. As indicated in the Board's order, the Board denied applicant's good cause exception because the applicant failed to appear for her September 22, 2006, administrative hearing.
2. Following the Board's denial, the applicant submitted a timely request for rehearing under Arizona Administrative Code ("A.A.C.") R13-11-110(A).
3. The applicant's request for rehearing or review credibly explains that she had a medical emergency on September 21, 2006. In addition, the applicant provided documentation that she was admitted to the hospital on September 22.
4. The applicant had good cause for failing to appear at her scheduled hearing.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board make the following conclusions of law.

Sample motions responding to a request for rehearing or review

1. An applicant demonstrates good cause for failing to appear at a hearing when she demonstrates that, using reasonable diligence, she could not have been present at the hearing or requested that the hearing be rescheduled under A.A.C. R13-11-106(D). A.A.C. R13-11-108(B).
2. Based on the above factor, the Board has grounds to schedule a new hearing for the applicant.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board grant the applicant's request for a rehearing.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The motion passes. The request for rehearing has been granted.

Motion that grants the request for review but affirms the original decision

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board make the following findings of fact.

1. The Board denied the applicant's good cause exception on October 1, 2006. As indicated in the Board's order, the Board denied applicant's good cause exception in part because the applicant failed to submit documentary proof that he completed the sentence from his April 2, 2004, offense.
2. Following the Board's denial, the applicant submitted a timely request for review or rehearing under Arizona Administrative Code ("A.A.C.") R13-11-110(A).
3. The applicant's request for rehearing or review explains that one of the documents he provided demonstrated that he completed the sentence for the April 2, 2004, offense.
4. The Board finds that the applicant completed his sentence for the April 2, 2004, offense and submitted documentation that he completed the sentence with his application package.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board make the following conclusions of law.

Sample motions responding to a request for rehearing or review

1. Under A.A.C. R13-11-110(C), the Board may grant a request for rehearing or review if the applicant shows that his (or her) rights were materially affected and that the Board's findings of fact are not supported by the evidence in the administrative record.
2. There are no disputed findings of fact that would warrant a rehearing.
3. Despite the Board's erroneous determination that the applicant did not provide evidence that he completed the sentence from his April 2, 2004, offense, sufficient grounds existed for the Board to deny applicant a good cause exception.
4. Based on the above factors, the Board has grounds to deny the applicant's request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board grant the applicant's request for review but that the Board uphold its original good-cause-exception determination.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The motion passes. The request for rehearing or review

Sample motions responding to a request for rehearing or review

has been granted, but the Board has upheld its original good-cause-exception determination.

Motion that grants the request for review and reverses the original decision

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board make the following findings of fact.

1. The Board denied the applicant's good cause exception on October 1, 2006. As indicated in the Board's order, the Board denied applicant's good cause exception in part because the applicant failed to submit documentary proof that he completed the sentence from his April 2, 2004, offense.
2. Following the Board's denial, the applicant submitted a timely request for review or rehearing under Arizona Administrative Code ("A.A.C.") R13-11-110(A).
3. The applicant's request for rehearing or review explains that one of the documents he provided demonstrated that he completed the sentence for the April 2, 2004, offense.
4. The Board finds that the applicant completed his sentence for the April 2, 2004, offense and submitted documentation that he completed the sentence with his application package.
5. There are no disputed facts.
6. Had it not been for the Board's erroneous determination that the applicant did not provide evidence that he completed the sentence from his April 2, 2004, offense, the Board would have granted a good cause exception.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All

Sample motions responding to a request for rehearing or review

opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board make the following conclusions of law.

1. Under A.A.C. R13-11-110(C), the Board may grant a request for rehearing or review if the applicant shows that his (or her) rights were materially affected and that the Board’s findings of fact are not supported by the evidence in the administrative record.
2. A rehearing is warranted only if there are disputed facts.
3. Based on the above factors, the Board has grounds to grant the applicant’s request for review and reverse the original decision.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying “Yes” or “Aye.”] All opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board grant the applicant’s request for review, reverse the original decision, and grant a good cause exception.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board’s executive director or another staff member will call the roll. The Board members in favor respond by saying “Yes” or “Aye.” The Board members opposed respond by saying “No” or “Nay.”] The motion passes. The request for rehearing or review

Sample motions responding to a request for rehearing or review

has been granted, and the applicant has been granted a good cause exception.

Dennis Seavers

From: SUSAN.SENDROW@ARIZONAEA.ORG
Sent: Wednesday, February 07, 2007 11:34 AM
To: dennis.seavers@azbof.gov
Cc: ALICE.GARTELL@ARIZONAEA.ORG
Subject: RE: Meeting on February 9 - Board of Fingerprinting

Thanks for the notification, Dennis. I have a meeting on Friday morning and thus can't attend the Board meeting, but I would like to comment on the January 29, 2007 Memorandum on "Board decisions following administrative hearings" attached to the meeting notice.

Section III of the Memorandum discusses the Board's review of the hearing officer's recommended findings of fact, conclusions of law, and decision. I'm concerned about the following statement in that Section: "The Board may decide to hear arguments from the applicant, limited to a specific period of time (e.g., five minutes); or the Board may decide not to hear arguments." That statement ignores a significant provision of A.R.S. Section 41-1061, pertaining to contested administrative cases, and deprives the applicant of a meaningful hearing, which is required by due process.

The Memorandum cites Section 41-1061 as the underlying basis for many of the procedural and substantive processes noted. For example, pursuant to Section 41-1061(A), 20 days' notice must be given prior to the hearing before the hearing officer and prior to the Board meeting at which the hearing officer's recommendations are considered. The Memorandum does not recognize, however, Section 41-1061(C), which states: "Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved." This opportunity should be available at both the hearing officer and Board stages of the good cause application process.

In addition to disregarding the statutory provision, making the availability of argument to the Board a discretionary matter ignores the fundamental principles of due process. Denying an applicant the opportunity to comment or argue in response to the hearing officer's recommendations deprives the applicant of a meaningful hearing before the Board, which sits as the ultimate decision maker.

The Memorandum further states that "the Board should adopt a policy on accepting testimony and other evidence at its review." This statement suggests that the issue of whether to hear arguments at the Board meeting may still be an open question. If so, please let me know when the Board will discuss this issue so that I may appear and submit comments. If the Board is discussing this issue on Friday, please submit my comments as reflected in this e-mail.

Thanks again for the meeting notice and the opportunity to comment. Please don't hesitate to contact me via e-mail or at 602-264-1774, extension 110, if discussion would be helpful.

Susan Sendrow
Staff Attorney
Arizona Education Association

From: Dennis Seavers [mailto:dennis.seavers@azbof.gov]
Sent: Tuesday, February 06, 2007 2:06 PM
To: Dennis Seavers
Subject: Meeting on February 9 - Board of Fingerprinting

PUBLIC MEETING

The Board of Fingerprinting will be holding a public meeting on Friday, February 9, 2007, at 8:30 a.m. Among other topics, the Board will be considering changes to how it handles cases that have been referred to an administrative hearing. The notice of meeting, which you can download using the link below, includes a memo that describes changes that the Board may adopt.

Please note that some of this meeting may be conducted in executive session, which is closed to the public. Please also note that the meeting will not begin before 8:30 but may begin later. Also, the Board's physical address differs from its mailing address. Please contact me if you plan on coming to the meeting so that I can give you directions.

I have not attached the agenda, but it is available on the Board's Web site (www.azbof.gov). You can download the agenda directly at the following link:
<http://www.azbof.gov/meetings/20070209Notice.pdf>

A full list of notices of and minutes from Board meetings is available at the following link:
<http://www.azbof.gov/meetings.htm>

Dennis Seavers
Executive Director, Arizona Board of Fingerprinting
www.azbof.gov

You are on this e-mail list because you have indicated that you would like to receive announcements from the Board of Fingerprinting. If you would like to be removed from this list at any time, please reply to this e-mail or write to dennis.seavers@azbof.gov, or call 602-322-8593.

Arizona Board of Fingerprinting

Budget vs. Actual

Fiscal Year 2007, Quarters 1 and 2

Minutes, 2/9/2007
ATTACHMENT 3

	<u>Jul - Dec 06</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Income				
4900 - Transfers In				
4901 - Operating Transfers In	97,263.00	180,000.00	-82,737.00	54.04%
Total 4900 - Transfers In	<u>97,263.00</u>	<u>180,000.00</u>	<u>-82,737.00</u>	<u>54.04%</u>
FY06 Carryover	561,750.30	561,750.30	0.00	100.0%
Total Income	<u>659,013.30</u>	<u>741,750.30</u>	<u>-82,737.00</u>	<u>88.85%</u>
Expense				
6000 - Personal Services				
6010 - Basic Compensation				
6011 - Regular Base Salary	66,857.04	80,987.80	-14,130.76	82.55%
Total 6010 - Basic Compensation	<u>66,857.04</u>	<u>80,987.80</u>	<u>-14,130.76</u>	<u>82.55%</u>
6030 - Exception Compensation				
6028 - 2.5% Performance Pay	1,837.80	2,024.69	-186.89	90.77%
6031 - Overtime	24.83			
Total 6030 - Exception Compensation	<u>1,862.63</u>	<u>2,024.69</u>	<u>-162.06</u>	<u>92.0%</u>
6040 - Leave Compensation				
6041 - Annual Leave	3,801.66			
6042 - Sick Leave	2,045.43			
6047 - Annual Leave Payout	754.68			
6048 - Holiday Leave Taken	3,173.19			
Total 6040 - Leave Compensation	<u>9,774.96</u>			
Total 6000 - Personal Services	78,494.63	83,012.49	-4,517.86	94.56%
6100 - ERE				
6110 - Insurance				
6111 - FICA	5,925.97	6,074.09	-148.12	97.56%
6113 - Medical Insurance	5,636.07	16,461.00	-10,824.93	34.24%
6114 - Basic Life	71.91	74.73	-2.82	96.23%
6116 - Long-term Disability	388.69	404.93	-16.24	95.99%
6117 - Unemployment Insurance	119.20	121.48	-2.28	98.12%
6118 - Dental Insurance	508.84	787.59	-278.75	64.61%
6119 - Worker's Compensation	388.66	404.93	-16.27	95.98%
Total 6110 - Insurance	<u>13,039.34</u>	<u>24,328.75</u>	<u>-11,289.41</u>	<u>53.6%</u>
6150 - Retirement Plan Payments				
6155 - ASRS	6,578.69	6,964.95	-386.26	94.45%
Total 6150 - Retirement Plan Payments	<u>6,578.69</u>	<u>6,964.95</u>	<u>-386.26</u>	<u>94.45%</u>
6180 - Other ERE				
6183 - Personal Services	823.56	809.88	13.68	101.69%
6185 - GITA Charge	110.48	121.48	-11.00	90.95%
6186 - Atty. Gen. Pro Rate Chg.	498.44	514.27	-15.83	96.92%
6189 - Sick Leave Accumulation	313.96	323.95	-9.99	96.92%
Total 6180 - Other ERE	<u>1,746.44</u>	<u>1,769.58</u>	<u>-23.14</u>	<u>98.69%</u>

Arizona Board of Fingerprinting

Budget vs. Actual

Fiscal Year 2007, Quarters 1 and 2

Minutes, 2/9/2007
ATTACHMENT 3

	<u>Jul - Dec 06</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Total 6100 - ERE	21,364.47	33,063.28	-11,698.81	64.62%
6200 - Prof. & Outside Services				
6210 - Financial Services				
6211 - Bond Issuance Cost	687.50	687.50	0.00	100.0%
Total 6210 - Financial Services	<u>687.50</u>	<u>687.50</u>	<u>0.00</u>	<u>100.0%</u>
6270 - Education & Training				
6271 - Education & Training	32.00	32.00	0.00	100.0%
Total 6270 - Education & Training	<u>32.00</u>	<u>32.00</u>	<u>0.00</u>	<u>100.0%</u>
6290 - Other Prof. & Out. Svcs.				
6299 - Other Prof. & Out. Svcs.	300.00	15,000.00	-14,700.00	2.0%
Total 6290 - Other Prof. & Out. Svcs.	<u>300.00</u>	<u>15,000.00</u>	<u>-14,700.00</u>	<u>2.0%</u>
Total 6200 - Prof. & Outside Services	1,019.50	15,719.50	-14,700.00	6.49%
7000 - Other Operating				
7150 - IT Services				
7153 - Internal Svc. Data Proc.	2,332.70	3,200.00	-867.30	72.9%
7172 - External Comm. Long Dist	3,624.63	2,500.00	1,124.63	144.99%
7179 - Other External Comm.	1,457.81	2,000.00	-542.19	72.89%
Total 7150 - IT Services	<u>7,415.14</u>	<u>7,700.00</u>	<u>-284.86</u>	<u>96.3%</u>
7200 - Rental Expenditures				
7221 - Rental of Land & Bldgs.	7,015.02	14,030.04	-7,015.02	50.0%
7229 - Miscellaneous Rent	144.00	200.00	-56.00	72.0%
Total 7200 - Rental Expenditures	<u>7,159.02</u>	<u>14,230.04</u>	<u>-7,071.02</u>	<u>50.31%</u>
7250 - Repair & Maintenance				
7266 - Repair/Maint-Other Equip	108.80	180.00	-71.20	60.44%
Total 7250 - Repair & Maintenance	<u>108.80</u>	<u>180.00</u>	<u>-71.20</u>	<u>60.44%</u>
7300 - Operating Supplies				
7321 - Office Supplies	3,830.04	3,000.00	830.04	127.67%
Total 7300 - Operating Supplies	<u>3,830.04</u>	<u>3,000.00</u>	<u>830.04</u>	<u>127.67%</u>
7450 - Conf, Edu, & Training				
7455 - Conf, Edu, & Train Regis	531.25			
Total 7450 - Conf, Edu, & Training	<u>531.25</u>			
7480 - Postage & Delivery				
7481 - Postage & Delivery	4,518.37	5,000.00	-481.63	90.37%
Total 7480 - Postage & Delivery	<u>4,518.37</u>	<u>5,000.00</u>	<u>-481.63</u>	<u>90.37%</u>
7500 - Miscellaneous Operating				
7511 - Awards	201.61			
7541 - Books, Subscr., & Pubs.	910.39	600.00	310.39	151.73%

Arizona Board of Fingerprinting

Budget vs. Actual

Fiscal Year 2007, Quarters 1 and 2

Minutes, 2/9/2007
ATTACHMENT 3

	<u>Jul - Dec 06</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Total 7500 - Miscellaneous Operating	1,112.00	600.00	512.00	185.33%
Total 7000 - Other Operating	24,674.62	30,710.04	-6,035.42	80.35%
8500 - Non-capital Equipment				
8550 - EDP Equip PC/LAN Non-cap				
8551 - EDP Equip. Non-cap Purch	1,898.79	2,500.00	-601.21	75.95%
Total 8550 - EDP Equip PC/LAN Non-cap	1,898.79	2,500.00	-601.21	75.95%
8570 - Other Equip. - Non-cap.				
8571 - Other Equip. - Non-cap.	805.25			
Total 8570 - Other Equip. - Non-cap.	805.25			
8580 - Non-capitalized Software				
8583 - PC/LAN Software Non-cap.	1,415.06	1,200.00	215.06	117.92%
Total 8580 - Non-capitalized Software	1,415.06	1,200.00	215.06	117.92%
Total 8500 - Non-capital Equipment	4,119.10	3,700.00	419.10	111.33%
9100 - Transfers out				
9101 - Operating Transfers Out	10,253.00	16,504.00	-6,251.00	62.12%
Total 9100 - Transfers out	10,253.00	16,504.00	-6,251.00	62.12%
Total Expense	139,925.32	182,709.31	-42,783.99	76.58%
Net Income	<u>519,087.98</u>	<u>559,040.99</u>	<u>-39,953.01</u>	<u>92.85%</u>

**Arizona Board of Fingerprinting
Fiscal Year 2007 Strategic Plan
July 1 to December 31, 2007**

Goal 1. To make fair and consistent determinations on good cause exceptions

Performance Measure	FY05 Actual	FY06 Actual	FY07 Estimate	FY07 Actual				
				Quarter 1	Quarter 2	Quarter 3	Quarter 4	YTD
Percent of investigator recommendations for expedited reviews accepted	85.80%	97.01%	98.00%	97.10%	94.90%			96.11%
Percent of applications approved	80.71%	65.29%	70.00%	83.83%	64.77%			73.83%
Percent of approvals by expedited review	57.20%	72.85%	70.00%	85.71%	88.70%			87.09%
Percent of approvals by administrative hearing	42.80%	27.15%	30.00%	14.29%	11.30%			12.91%

Goal 2: To provide applicants with timely decisions on their good-cause-exception applications

Performance Measure	FY05 Actual	FY06 Actual	FY07 Estimate	FY07 Actual				
				Quarter 1	Quarter 2	Quarter 3	Quarter 4	YTD
Number of applications received	1,531	1,770	2,046	505	477			982
Number of applications disposed	1,492	1,769	2,046	336	370			706
Ratio of cases opened to cases closed	1:.97	1:1	1:1	1:.67	1:.78			1:.72
Average number of days to dispose	79.07	81.89	70.00	78.72	99.92			89.91
Average number of days spent processing applications	54.37	55.31	47.00	49.03	41.20			44.93

Average number of days spent processing application from receipt to expedited review	17.83	43.50	35.00	18.74	20.88			19.72
Percent of applications that undergo an expedited review within 20 days (processing time)	73.03%	72.86%	80.00%	63.69%	58.02%			61.11%
Average days from expedited review to hearing	52.59	64.22	55.00	57.71	66.41			61.19
Percent of applications heard within 60 days of expedited review	70.99%	42.42%	60.00%	69.57%	23.91%			51.30%
Percent of applications decided within 60 days of hearing	91.08%	67.83%	75.00%	42.03%	50.00%			45.22%

Goal 3. To develop fair and comprehensible rules, policies, and procedures for determining good cause exceptions

Performance Measure	FY05 Actual	FY06 Actual	FY07 Estimate	FY07 Actual				
				Quarter 1	Quarter 2	Quarter 3	Quarter 4	YTD
Number of requests received	2,844	3,020	3,207	810	851			1,661
Ratio of requests for good cause exceptions to applications submitted	1:.54	1:.59	1:.64	1:.63	1:.57			1:.60
Percent of applications complete on initial submission	53.35%	37.42%	45.00%	48.36%	37.19%			42.55%

Arizona Board of Fingerprinting

Memo

TO: Board members
FROM: Dennis Seavers
C:
Date: February 6, 2007
SUBJECT: Legislative update



On February 9, 2007, the Board will hold a public meeting, and one of the agenda items is an update on legislation. This memo summarizes the progress of important legislation affecting the Board, particularly Senate Bill 1045.

SENATE BILL 1045

At various meetings in 2006, the Board adopted a legislative proposal that primarily expanded the list of precluding offenses. This legislative proposal appears in Senate Bill ("SB") 1045. I secured sponsorship of the bill from Linda Gray, a Republican senator who chairs the Senate Committee on Public Safety and Health Services ("PSHS").

To date, there has been no opposition to the bill, which cleared PSHS by unanimous vote. There has been public support for the legislation, which has moved through the Senate exceptionally quickly.

The only changes to the originally introduced bill have been the following.

- **Gray amendment, PSHS.** As the Board had requested at its December 15, 2006, meeting, I asked Senator Gray to amend the set of offenses currently listed as "An offense involving organized crime and fraud under title 13, chapter 23" to "An offense under title 13, chapter 23." In addition, at the initiative of a research analyst, the amendment made a technical change to simplify the list of precluding offenses. Specifically, the amendment eliminated the listed offense of sexual abuse of a minor. This offense would be included under the newly added and broader offense of sexual abuse. A research analyst had attempted to remove the offense listing of sexual abuse of a vulnerable adult under the mistaken belief that sexual abuse also would encompass this offense. However, Mike Timmerman at DPS and I prevented this change, pointing out that sexual abuse of a vulnerable adult is not included under sexual abuse and that the proposed change would make sexual abuse of a vulnerable adult a permissible offense.

- **Gorman floor amendment.** Senator Pamela Gorman introduced an amendment on the Senate floor in the Committee of the Whole. This amendment added references to specific statutes in the criminal code for some of the newly added offenses. For instance, “Furnishing harmful items to minors” was amended to read, “Furnishing harmful items to minors as prescribed in section 13–3506.” It is unclear why Senator Gorman felt that this amendment was necessary, though I would guess that the purpose was to prevent certain activities from being included under these listings. In particular, Senator Gorman may have wanted to make sure that “Furnishing harmful items to minors” did not include cover activities like selling alcohol or cigarettes to minors, even though the definition of “harmful items” excludes cigarettes and alcohol. I have confirmed with DPS that this amendment would have no operational impact.

As of February 1, the bill had been approved unanimously by the Senate and was transmitted to the House.

SENATE BILL 1316

SB1316 would add administrators of nursing care institutions and managers of assisted living facilities to the fingerprint clearance card system. The Board indicated its support for this legislation at a previous meeting. Many of these individuals already have fingerprint clearance cards, so there likely would be only a minor impact on the Board’s caseload.

As of February 6, the bill had cleared the standing committees. It will need to clear the Senate floor before being transmitted to the House.

SENATE BILL 1605

SB 1605 appeared to be intended to require DHS to regulate certain individuals who provide caregiving services to people who require at-home medical care. These individuals are not certified nursing assistants or nurses, and they do not fall under the home health agency provisions of A.R.S. § 36–411. These individuals may provide various services, such as housekeeping and personal care. However, as written, the bill would include a variety of activities that probably should not be regulated, including housekeeping services such as Merry Maids.

Assuming that the bill is amended to focus on the proper group of service providers, the bill may have consequences that the Board should consider. (The bill has possibly negative consequences for other agencies, including DHS, but I do not discuss those consequences here.) Specifically, the bill would require this new group of service providers to get a fingerprint clearance card, and the Board’s caseload may increase substantially. There may be about 400 companies that have caregivers as employees who would need to get a fingerprint clearance card. If those companies had 10 employees each, then the Board may see an increase of about 200 good-cause-exception applications. It is likely that the number of people who would require fingerprint clearance cards would be substantially higher.

Although it is not clear how large an increase there would be to the Board's caseload, I estimate that the Board's current staff will not be able to keep up with the caseload increase. If this bill were to pass, the Board might need to hire at least one full-time employee. Although the increase in fingerprint-clearance-card applications would also increase the Board's income, the Board may want to take a position on this bill.

KEY NOTES - SUITE 101

- ① EXISTING ENTRANCE/EXIT DOOR TO REMAIN. VERIFY KEYING REQUIREMENTS WITH TENANT.
- ② EXISTING MILLWORK TO BE REMOVED.
- ③ EXISTING DOOR TO BE REMOVED, SAVE FOR REUSE OR RETURN TO BUILDING STOCK.
- ④ EXISTING ONE-WAY GLAZING TO BE REMOVED, PROTECT FOR RELOCATION.
- ⑤ CEILING GRID AND TILES TO BE REPAIRED AS NEEDED. EXISTING TILES FROM SMALLER ROOMS ARE TO BE USED TO REPLACE DAMAGED TILES IN OPEN AREAS WITH NEW TILES TO BE LOCATED WITHIN ENTIRE ROOMS. COORDINATE WITH BUILDING STOCK.
- ⑥ EXISTING MILLWORK TO REMAIN, PROTECT FROM DUST AND DAMAGE THROUGHOUT CONSTRUCTION. PROVIDE THOROUGH CLEANING FOR NEW TENANT.
- ⑦ PREPARE ENTIRE SUITE TO RECEIVE NEW BUILDING STANDARD CARPET, WALL BASE, AND PAINT U.N.O..
- ⑧ VCT TO REMAIN AT THIS ROOM, PREPARE ROOM TO RECIEVE NEW RUBBER WALL BASE AND PAINT ONLY. VCT TO BE CLEANED AND WAXED FOR NEW TENANT.
- ⑨ GLAZING FILM TO BE REMOVED. PROVIDE BUILDING STANDARD MINI BLINDS TO MATCH ADJACENT GLAZING.
- ⑩ PROVIDE DOOR SWEEP FOR SOUND ATTENUATION.
- ⑪ NEWREUSED 36" WIDE BUILDING STANDARD DOOR, FRAME, AND ADA COMPLIANT HARDWARE.
- ⑫ RELOCATED ONE-WAY GLAZING. TOP OF GLAZING TO BE AT DOOR HEIGHT WITH BOTTOM NOT LESS THAN 36" A.F.F.
- ⑬ FURNISHINGS SHOWN FOR LAYOUT PURPOSES ONLY, N.I.C.

LEGEND

- == == == EXISTING PARTITION OR WALL TO BE DEMOLISHED
- █ EXISTING WALL OR CEILING HEIGHT PARTITION TO REMAIN.
- ==== NEW BUILDING STANDARD INTERIOR PARTITION TO THE UNDERSIDE OF THE SUSPENDED CEILING ABOVE
- ==== EXISTING CORRIDOR OR DEMISING PARTITION
- ⊖ DUPLEX OUTLET
- ⊕ FOURPLEX OUTLET
- ◀ TELE/DATA OUTLET
- D DEDICATED
- E EXISTING

FAIRMOUNT ON THIRD

3839 NORTH 3RD STREET PHOENIX, AZ 85012

ARIZONA BOARD OF FINGERPRINTING - SUITE 101

SP-1

1.11.07

PDI NO: 620.37

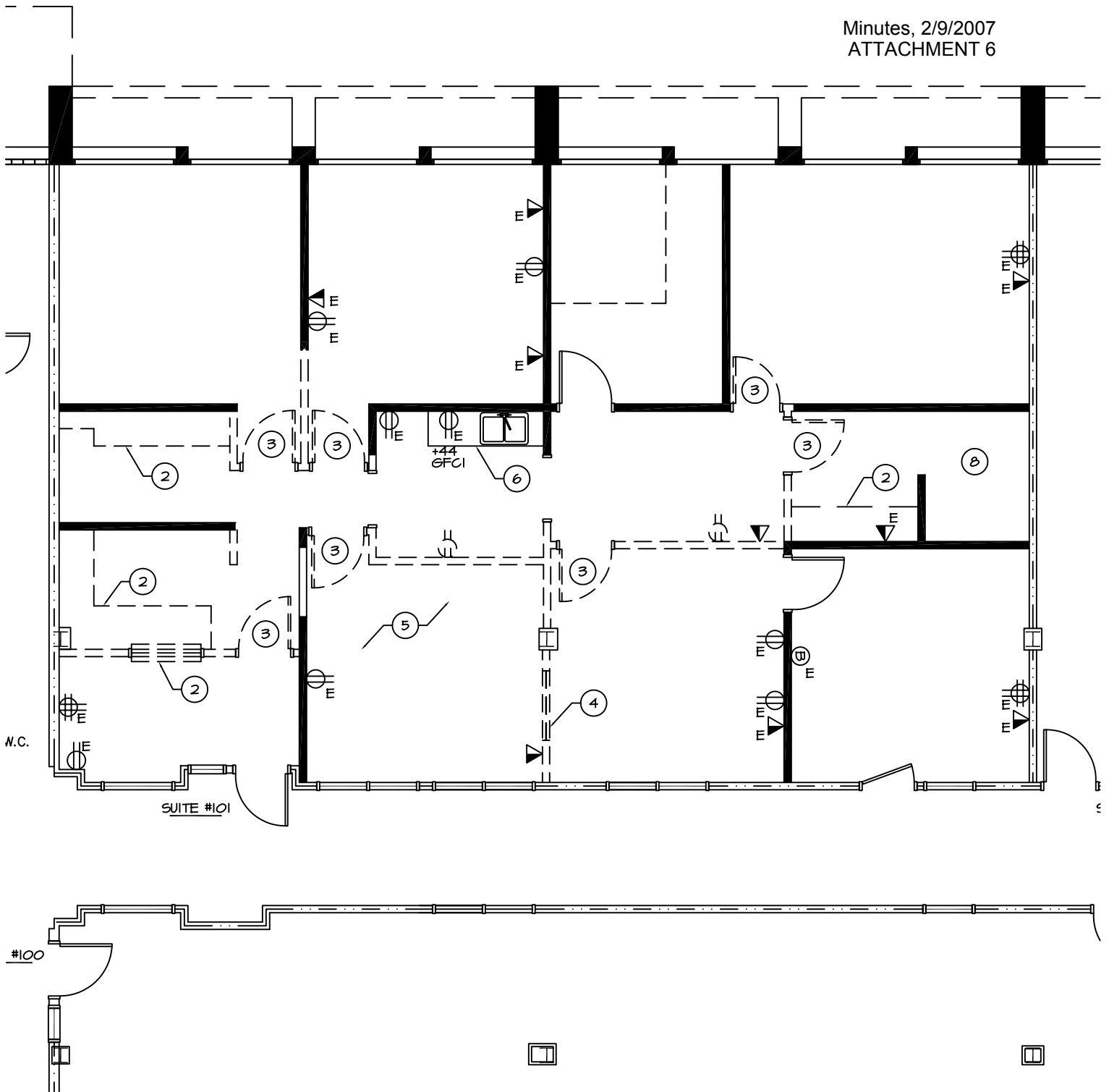
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**PINNACLE
DESIGN, INC**



1st FLOOR DEMO PLAN

1/8" = 1'-0"



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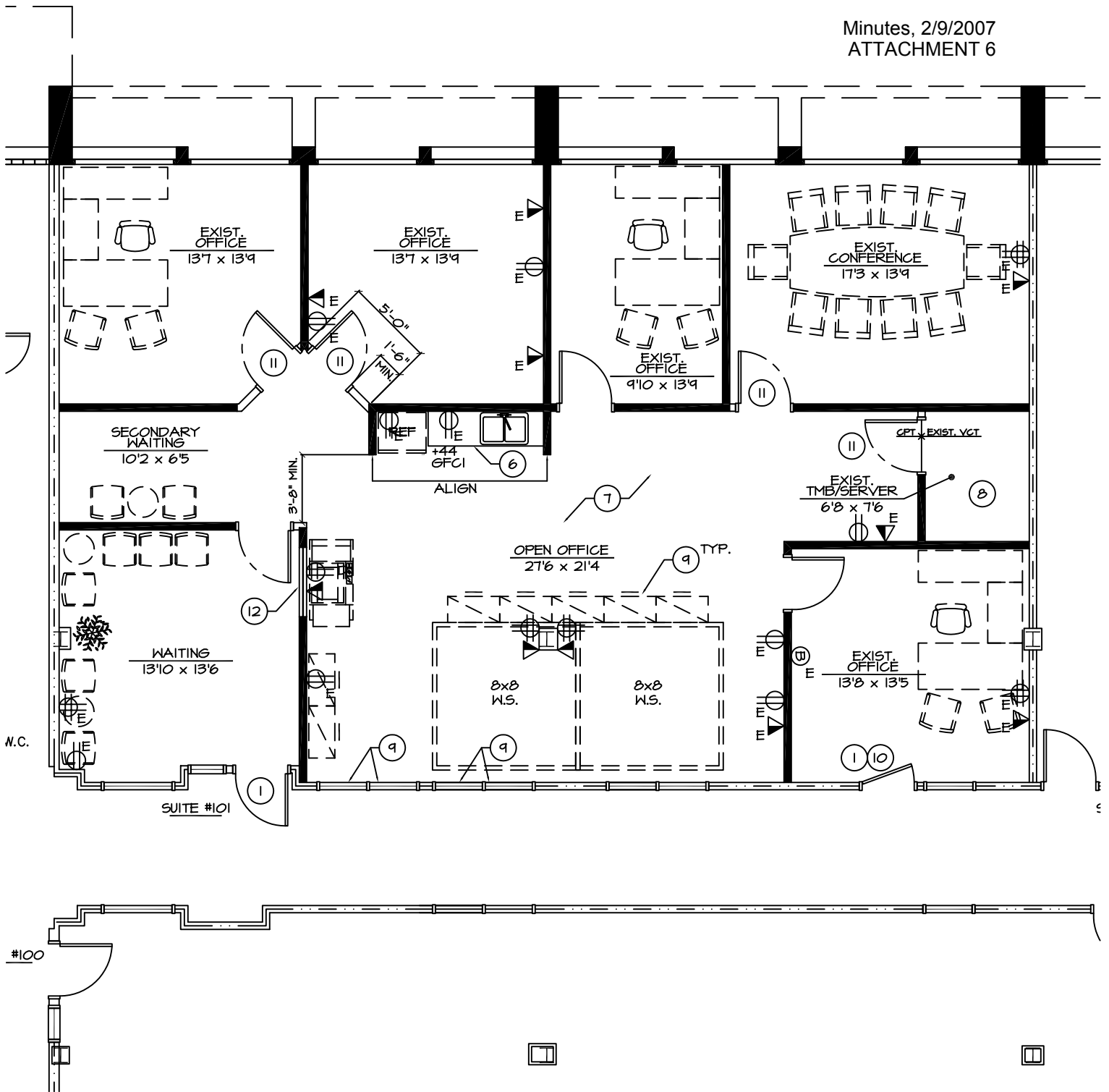
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