



## **ARIZONA BOARD OF FINGERPRINTING**

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### **Notice of Public Meeting**

October 23, 2007, at 9:00 a.m.

3839 North 3rd Street, Suite 107, Phoenix, Arizona

#### **Board Members**

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

#### **Executive Director**

Dennis Seavers

Under Arizona Revised Statutes ("A.R.S.") § 38-431.02, notice is hereby given to the members of the Arizona Board of Fingerprinting ("board") and to the general public that the board will hold a meeting open to the public as specified below. The board reserves the right to change the order of the agenda.

Individuals who wish to acquire background material provided to board members (with the exception of material relating to possible or previous executive sessions) may request them by contacting Dennis Seavers at (602) 265-0135.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter by contacting Dennis Seavers at (602) 265-0135. Requests should be made as early as possible to allow time to arrange the accommodation.

DATED AND POSTED THIS 19th day of October 2007 at 12:30 p.m.

Arizona Board of Fingerprinting

By \_\_\_\_\_  
Dennis Seavers, Executive Director

## AGENDA

**Board members may be present telephonically**

I. CALL TO ORDER AND ROLL CALL Mr. Easaw

II. CALL TO THE PUBLIC Mr. Easaw

At this portion of the meeting, the public is invited to make comments. Arizona law prohibits board members from discussing items that are not on the agenda. Therefore, action taken as a result of public comment will be limited to scheduling the matter for further consideration and decision at a later date.

III. APPROVAL OF MINUTES Mr. Easaw

- A. Minutes from the August 24, 2007 meeting
- B. Minutes from the September 7, 2007 meeting
- C. Minutes from the October 5, 2007 meeting

IV. LEGISLATION Mr. Easaw

At this portion of the meeting, the Board will discuss and approve a proposal for legislation for the 2008 legislative session. Among the topics the legislation would address are: (1) a five-year continuation of the Board of Fingerprinting beyond its July 1, 2008 sunset; (2) a requirement for Board employees to acquire a fingerprint clearance card; and (3) the role of the Board and the hearing officer in making decisions on good-cause-exception applications and alterations to the good-cause-exception process.

V. ADJOURNMENT Mr. Easaw

# Arizona Board of Fingerprinting

## Memo

TO: Board members  
FROM: Dennis Seavers, Executive Director  
C: Christopher Munns, Assistant Attorney General  
Date: October 19, 2007  
**SUBJECT: Legislation for 2008 session**



At its October 23, 2007 meeting, the Board will be discussing and adopting a legislative proposal. This memorandum offers information on what options the Board has for legislation and enumerates the actions the Board must and may take at the October 23 meeting.

### **SUMMARY**

At the least, the Board must adopt proposed legislation to continue the agency beyond its July 1, 2008 termination date. (See Section A below.) In addition, the Board should consider a legislative proposal that addresses issues that legislators discussed at the Board's October 3, 2007 sunset hearing. Specifically, the two issues discussed were: (1) requiring Board employees, but not Board members, to have a fingerprint clearance card, and (2) clarifying or changing the role of the hearing officer in making final decisions on good-cause-exception applications. (See, respectively, Sections B and C below.)

#### **A. SUNSET**

Under A.R.S. § 41-3008.18(A), the Board of Fingerprinting terminates on July 1, 2008. For the Board to be continued, the Legislature must pass a bill to extend the agency's date of termination. At the October 3 sunset hearing, the committee of reference recommended that the Board be continued for five years (i.e., until July 1, 2013).

The Board must approve a legislative proposal to continue the agency for five years.

#### **B. FINGERPRINTING BOARD EMPLOYEES**

As discussed in the October 5, 2007 Board meeting, Rep. Jerry Weiers suggested that Board employees be required to have a fingerprint clearance card. Sen. Linda Gray, the chairman of the committee of reference, agrees that Board employees should have fingerprint clearance cards. Sen. Gray indicated that she did not believe Board members should be required to have fingerprint clearance cards, since the agencies that appoint the Board members presumably select suitable candidates for membership on the Board.

I recommend that the Board approve a legislative proposal to require Board employees to have fingerprint clearance cards as a condition of employment. Since this legislative change has the

support of the chairman of the committee of reference and our probable legislative sponsor, Sen. Linda Gray, the Board should not reject the proposal for fingerprinting Board employees.

## **C. ROLE OF HEARING OFFICER**

In previous Board meetings and at the sunset hearing, there was much discussion of the recent *Baker* decision, which says that the hearing officer makes the final decision when the Board delegates a hearing officer to conduct an administrative hearing. The committee of reference shares the Board's concern about the hearing officer, rather than the Board, making the final decision. The Board should consider these concerns and decide whether to adopt a legislative proposal to alter the Board's good-cause-exception process following an expedited review.

In addition to the concerns about the hearing officer making the final decision, Sen. Linda Gray also expressed concern about returning to the process that the Board had adopted in February 2007. (For more information about this process, please see the February 9, 2007 minutes, which are available at [www.azbof.gov/meetings.htm](http://www.azbof.gov/meetings.htm).) Under this process, there were two hearings: an evidentiary hearing (i.e., the hearing at which the hearing officer asks questions, considers evidence, and takes testimony from the applicant or others) and the meeting at which the Board would consider the hearing officer's recommendation. For each hearing, the applicant was entitled to receive at least 20 days notice. Thus, it would take at least 40 days (and almost always longer) for the applicant to receive a decision following the expedited review. Sen. Gray believed that this 40-day time frame was a long time for applicants—specifically, teachers—to wait for a decision.

The Board has three options it could pursue: (1) leave the process as it is, (2) return to the February 2007 process, or (3) amend the Board's statutes to specify a process for hearings. Each of these options and their advantages and disadvantages are discussed below.

Since the Board has expressed a preference to change the current process, I would recommend that the Board select the third option—amending the Board's statutes to specify a process for hearings. This option may allow the Board to avoid some caseload and timeliness problems, which are discussed below. However, I would recommend that the Board not make any changes in the next legislative session and instead leave the current process in place. During the next year, the Board can develop a new process. Waiting one year will give the Board sufficient time to consider the impact of changes and avoid the problems that might occur by rushing to develop a new process without taking time to consider the ramifications of the new process or without getting input from stakeholders. Board members should note that by adopting this recommendation, the current process will remain in place for nearly two years; legislation to create a new process would be introduced in the 2009 session and would not be effective until the 2009 general effective date (probably August or September 2009).

### **1. Take no action**

The Board could decide that it does not want to propose legislation to change the process. With this option, the Board would be leaving the process unchanged. The hearing officer would

continue to make the final decision in cases where the Board delegated a hearing officer to conduct the administrative hearing.

### *Advantages*

The current process is efficient and faster than another process would be. There is not a delay between the time the recommendation is filed and the Board makes a decision. Instead, the hearing officer files an order, without having to wait for the next Board meeting or without having to give the applicant notice. The current process is also less cumbersome administratively. It does not require notices of hearing or preparation of information for Board meetings.

### *Disadvantages*

Board members have expressed concerns about the current process. (The Board should note that it has discussed these concerns but not formalized them through a motion. However, there appeared to be consensus among the members about these concerns at the August 24, 2007 meeting.) Among other concerns, Board members believe it is unwise to cede decision-making authority to a hearing officer. In particular, Board members are concerned that the Board has no control over decisions the agency makes once a case is referred to a hearing and a hearing officer is delegated. Board members have expressed a concern about the possibility for inconsistent decisions; Board members believe that a five-member entity is likelier to make consistent decisions than a single decision maker.

The committee of reference expressed similar concerns. Even solely as a political consideration, to address the concerns of the committee of reference, the Board might want to alter the current process.

## **2. Return to the February 2007 process**

The Board could amend its statutes so that the hearing officer does not make the final decision. The Board could propose legislation that makes it clear that the hearing officer only offers a recommendation.

Under this option, Article 6 of the Administrative Procedures Act (“APA”) would apply. The Board would be obligated to return to a process similar or identical to the one the Board adopted at its February 9, 2007 meeting.

### *Advantages*

This option would address the Board’s concerns about the role of the hearing officer. It would also make use of an existing administrative-hearing process because Article 6 of the APA would apply.

### *Disadvantages*

This option would not address Sen. Linda Gray's concern about the wait time necessitated by giving the applicant proper notice of the evidentiary hearing and the hearing at which the Board decides whether to accept the hearing officer's recommendation.

In addition, Board members had begun expressing concern about their caseload. Members had suggested that the Board might need to meet three times a month rather than every other week in order to keep up with the influx of hearing-officer recommendations and expedited-review cases. The concern about caseload might come up again if the Board were to return to its old process.

### **3. Create a new process**

The Board could propose legislation to exempt it from both Article 6 and Article 10 of the APA. (The Board is currently exempt from Article 10. As a result of this exemption, Article 6 applies to the Board's process.) The Board could specify a process for hearings in its statutes.

### *Advantages*

This option would address both the Board's concerns about the role of the hearing officer and Sen. Gray's concern about timeliness.

### *Disadvantage*

The Board could adopt a process that has unintended consequences. This issue is especially problematic because the Board will not have had much time to consider and develop a process by the time that proposed legislation must be submitted. (However, the Board could opt to keep the current process for one year while it spends time developing a new process. The Board could then propose legislation for the 2009 session.) In addition, legislators may be tempted to amend the legislative proposal. If the amendments have unintended consequences, as they sometimes do, the Board could be stuck with a problematic process until the next legislative session.

To the knowledge of our assistant attorney general ("AAG"), no other agency has its own process outlined in statute and is exempted from both Article 6 and Article 10 of the APA. If the Board specifies its own process in statute, it may be taking unprecedented action, and the AAG's ability to advise the Board may be limited, since there will not have been a history of court rulings to draw on for legal advice.

Finally, the concern described above (see "Return to the February 2007 process") would not be address by this option.

### *Rehearing or review*

The Board has discussed the possibility of having the hearing officer make the decision on cases, with the process for rehearing or review reserved to the Board. The process for requesting a rehearing or review is a means for the decision maker to identify problems or errors that

materially affected the rights of the applicant; it should not be thought of as an appeal. Since this process is meant to correct errors or problems in the initial decision, the request for rehearing or review must be considered and acted on by the decision maker. If the decision maker was the hearing officer, then the hearing officer, and not the Board, would consider the request for rehearing or review.

The Board could instead consider appeals of cases that the hearing officer denied. This option appears to be what the Board was considering when it discussed having the hearing officer make decisions and having the Board consider requests for rehearing or review. However, unless the Board had some mechanism for winnowing the number of cases eligible for appeal to the Board, most or all applicants would take advantage of the appeal. The issue that the Board was trying to address by considering this option—namely, reducing the Board’s caseload—would remain. In addition, this option has the same disadvantages as any other change to the current process, especially the possibility of unintended consequences.