



ARIZONA BOARD OF FINGERPRINTING

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Final Minutes for Public Meeting

Held September 3, 2010, at 9:30 a.m.

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

Board Members

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

Executive Director

Dennis Seavers

CALL TO ORDER AND ROLL CALL

Mr. Easaw called the meeting to order at 9:35 a.m. The following Board members were present: Charles Easaw, Arthur W. Baker, Ellen Kirschbaum, Mike LeHew, and Kim Pipersburgh. No Board members were absent.

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

CALL TO THE PUBLIC

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

APPROVAL OF MINUTES

For the draft minutes from the August 19, 2010 meeting, Mr. Easaw suggested that the word “ask” be replaced with “answer” in the first complete sentence on page 5. Ms. Kirschbaum made a motion to approve the amended draft minutes, and Mr. LeHew seconded the motion, which passed 5–0.

FISCAL YEAR 2011 BUDGET

Mr. Easaw referred Board members to Mr. Seavers’s August 31, 2010 memo, which proposed a revision of the fiscal year (“FY”) 2011 budget (see Attachment 1). At the August 19, 2010 meeting, the Board had asked Mr. Seavers to research costs for security. Mr. Seavers said that the Board should make a motion to revise the FY 2011 budget it adopted at the August 19 meeting if would like to approve the costs for security at Board hearings.

Mr. Baker made a motion to approve the proposed FY 2011 budget revision, and Ms. Kirschbaum seconded. The motion passed, 5–0.

ADMINISTRATIVE-HEARING PROCESS

Mr. Easaw referred Board members to Mr. Seavers’s August 31, 2010 memo on the administrative-hearing process (see Attachment 2). (For the purpose of these minutes, the term “evidentiary hearing” refers to the hearing before the hearing officer and “Board hearing” refers to the hearing where the Board decides whether to adopt, reject, or modify the hearing officer’s recommendation.)

Mr. LeHew said he did not favor allowing applicants to bring new evidence to the Board hearing. He believed that the Board staff goes above and beyond its requirements to help applicants meet their obligation to provide evidence of rehabilitation. He expressed concern about the amount of evidence that could be introduced at a Board hearing if the Board adopted the draft policy. Ms. Kirschbaum believed that the draft policy might not be fair to all applicants, since Board members might not have questions for all applicants. Ms. Kirschbaum and Ms. Pipersburgh believed that accepting new evidence would be fine as long as the evidence was limited in scope.

Mr. Easaw believed that with the current policy, the Board would be limited to the hearing officer’s recommendation and the administrative record. The Board might need clarification of an issue, but the current policy would prohibit new information that might offer that clarification. Mr. Easaw said that the Board should nonetheless stick with its current policy because of the difficulty in limiting the evidence presented at the Board hearing.

Mr. Seavers offered an alternative proposal that he believed would avoid the problems associated with permitting evidence to be presented at the hearing while allowing some new evidence to be presented. Under the current procedures, the hearing officer files a recommendation, and the applicant receives notice of a Board hearing and a copy of the recommendation. Applicants are

notified that they may submit a written response to the hearing officer's recommendation by a certain date (10 days before the Board hearing). Mr. Seavers said that under the alternative proposal, the applicant could submit new evidence in addition to (or in place of) a written response to the hearing officer's recommendation. Mr. Seavers said that the Board wouldn't be permitted to ask questions, but there wouldn't be a concern with a large amount of evidence, particularly testimonial evidence, being presented at the Board hearing. Instead, the Board would receive the evidence in advance of the Board hearing and have an opportunity to review it.

Mr. Easaw said he liked this alternative because it would allow applicants to present evidence that would address concerns that the hearing officers had raised, particularly when the applicants neglected to send evidence that could make a difference in the outcome. In addition, if applicants make progress toward completing their sentences, they could present the new evidence prior to the Board hearing.

Mr. LeHew asked what how much time passes between the hearing officer's recommendation being sent to the applicant and the Board hearing. Mr. Seavers responded that the recommendation and notice is sent at least 20 days, and generally not much longer, before the Board hearing. He asked what information the staff sends to the Board if the applicant submits information within the 20-day time frame. Mr. Seavers said that the staff transmits any information that applicants send and that it's up to the Board to decide whether the information is appropriate to consider. He believed it would be problematic if the staff were making editorial decisions about what information to send to the Board. Mr. Seavers noted that under the alternative proposal, applicants may still send a lot of new evidence to the Board, especially if the recommendation was for a denial. However, the alternative proposal might allow the Board to manage the amount of new evidence submitted.

Mr. Munns said that if the Board adopts the alternative proposal with the deadline for submitting new information, the Board will need to adhere to that deadline to avoid unfairness or unequal treatment of applicants. For example, even if applicants complete important sentencing requirements after the deadline for submitting information and show up with the evidence at the Board hearing, the Board should not accept the new evidence. Mr. Seavers asked Mr. Munns whether Board members would be required to review the entire administrative record if an applicant submits new evidence. Mr. Munns said that it would depend on what sort of evidence the applicant submits.

Mr. Easaw suggested that if the Board had important questions that weren't answered at the evidentiary hearing, in the administrative record, or by the new evidence submitted by the applicant, the Board could remand the case to the hearing officer, if the applicant agreed to waive the 80-day time frame required by A.R.S. § 41-619.55(E). Board members agreed that this would be a fair way to handle cases where the Board had questions for the applicant.

Mr. Seavers noted that the Board hearings would last longer because the Board might need to incorporate the new evidence in the findings of fact and conclusions of law. However, the Board hearings would be shorter than if the Board allowed applicants to bring evidence to the Board hearing.

Mr. Easaw asked Mr. Seavers to prepare a draft policy that incorporated the alternative proposal. The Board would review the draft policy at the next Board meeting.

Mr. Munns added that the hearing officers should be liberal in granting requests for telephonic hearings when the Board remands cases to the hearing officer for additional questions. He added that in some cases, it may not be necessary for the applicant to be present.

ADJOURNMENT

Mr. Baker moved to adjourn the meeting, and Mr. LeHew seconded the motion, which passed 5–0. Mr. Easaw adjourned the meeting at 10:08 a.m.

Minutes approved on September 16, 2010

Dennis Seavers, Executive Director



Arizona Board of Fingerprinting Memo

TO: Board members
FROM: Dennis Seavers
C:
Date: August 31, 2010
SUBJECT Security at hearings; budget revision

At its August 19, 2010 meeting, the Board discussed having security guards at Board hearings. The Board asked me to research costs and report at the next Board meeting.

An armed, off-duty Phoenix Police Department officer could serve as a security guard at Board hearings at the cost of \$35 an hour. The approximate annual cost for the Board would be \$3,000, which assumes an average of about 3 to 3.5 hours per Board meeting.

In the Board's budget submission to the Governor's Office of Strategic Planning and Budgeting, I included the \$3,000 estimated cost because the submission would be due before the Board's September 3 meeting. Nonetheless, if the Board wishes to authorize having security at hearings, it should adopt a motion to include that cost in the fiscal year 2011 budget.

I've attached a revised summary of the FY 2011 budget that reflects the cost of security. The revision appears in the category "6299 – Other Prof. & Out. Svcs.," which was \$1,000 in the budget that the Board adopted on August 19.

Attachment 1 - FY11 Budget Proposal (Compared with FY10 Actual)

	FY10 Actual	FY11 Proposed	Difference
REVENUES			
4900 - Operating Transfers In			
Prior FY Carryover	\$ 162,934.42	\$ 181,692.06	\$ 18,757.64
4901 - Oper. Transfers In	\$ 641,186.00	\$ 714,000.00	\$ 72,814.00
Total 4900 - Oper. Trans. In	\$ 804,120.42	\$ 895,692.06	\$ 91,571.64
TOTAL REVENUES	\$ 804,120.42	\$ 895,692.06	\$ 91,571.64
EXPENDITURES			
6000 - Personal Services	\$ 284,868.66	\$ 225,223.39	\$ (59,645.27)
6100 - Employee-related exp.	\$ 116,137.64	\$ 113,534.67	\$ (2,602.97)
6200 - Prof. & Outside Svcs.			
6211 - Bond Issuance Cost	\$ 3,725.98	\$ 3,840.00	\$ 114.02
6271 - Education & Training	\$ -	\$ -	\$ -
6299 - Other Prof. & Out. Svcs.	\$ 404.80	\$ 4,000.00	\$ 3,595.20
Total 6200 - Prof. & Outside Svcs.	\$ 4,130.78	\$ 7,840.00	\$ 3,709.22
7000 - Other Operating			
7110 - Insurance & Related Chgs	\$ 2,900.00	\$ 2,900.00	\$ -
7153 - Internal Svc. Data Proc.	\$ 7,985.97	\$ 7,137.01	\$ (848.96)
7172 - Ext. Comm. Long Dist.	\$ 13,777.64	\$ 13,002.84	\$ (774.80)
7179 - Other External Comm.	\$ 2,523.09	\$ 2,400.00	\$ (123.09)
7221 - Rental of Land & Bldgs.	\$ 59,697.55	\$ 70,551.65	\$ 10,854.10
7266 - Repair/Maint-Other Equip	\$ 1,323.59	\$ 1,387.25	\$ 63.66
7321 - Office Supplies	\$ 3,234.92	\$ 6,150.00	\$ 2,915.08
7481 - Postage & Delivery	\$ 9,698.15	\$ 10,000.00	\$ 301.85
7511 - Awards	\$ 24.13	\$ 100.00	\$ 75.87
7541 - Books, Subscr., & Pubs.	\$ 7,951.26	\$ 3,157.54	\$ (4,793.72)
7599 - Other Misc. Operating	\$ 69.00	\$ 470.00	\$ 401.00
Total 7000 - Other Operating	\$ 109,185.30	\$ 117,256.29	\$ 8,070.99
8500 - Non-capital Equipment			
8521 - Furniture Non-cap	\$ (1,719.02)	\$ -	\$ 1,719.02
8583 - PC/LAN Softw. Non-cap.	\$ 225.00	\$ 1,000.00	\$ 775.00
Total 8500 - Non-capital Equip.	\$ (1,494.02)	\$ 1,000.00	\$ 2,494.02
9100 - Transfers Out			
9101 - Op Trans Out: Fund Sweeps	\$ 109,600.00	\$ 13,200.00	\$ (96,400.00)
Total 9100 - Oper. Trans. Out	\$ 109,600.00	\$ 13,200.00	\$ (96,400.00)
TOTAL EXPENDITURES	\$ 622,428.36	\$ 478,054.35	\$ (144,374.01)
NET INCOME	\$ 181,692.06	\$ 417,637.71	\$ 235,945.65



Arizona Board of Fingerprinting Memo

TO: Board members
FROM: Dennis Seavers
C: Christopher Munns
Date: August 31, 2010
SUBJECT Draft administrative-hearing procedures

At its August 19, 2010 meeting, the Board discussed whether to accept new evidence at the Board hearing following an evidentiary hearing.¹ At the meeting, the Board conducted an informal poll, which indicated that a majority of members preferred to consider new evidence at Board hearings. The Board requested that I draft procedures that would give Board members an idea of how hearings would be conducted if new evidence were accepted at Board hearings.

This memo describes the current procedures (according to the Board's policy) and provides the draft procedures that the Board requested. Areas where the draft procedures depart significantly from the current procedures are underlined. Please note that by providing these draft procedures, I am not necessarily making a recommendation on whether the Board should adopt them.

Current procedures

1. After the Board conducts an expedited review, the applicant is scheduled for the evidentiary hearing.
 - a. The applicant is given at least 20 days notice of the evidentiary hearing.
 - b. The evidentiary hearing takes place within 45 days following the expedited review.
2. A hearing officer conducts the evidentiary hearing, at which the applicant presents all testimony and evidence.
3. Following the evidentiary hearing, the hearing officer prepares a recommended order. (In some cases, the hearing officer may leave the administrative record

¹ For the purpose of this memo, "evidentiary hearing" refers to the hearing before a hearing officer, and "Board hearing" refers to the hearing at which the Board decides whether to adopt, reject, or modify the hearing officer's recommended order.

- open for a short period of time after the hearing for the applicant to submit additional evidence.)
4. Within 80 days of the hearing, the Board hearing is scheduled to take place.
 - a. The applicant is given at least 20 days notice of the Board hearing, along with a copy of the hearing officer's recommendation.
 - b. The applicant may submit an optional written response to the hearing officer's recommendation. Applicants are told that the response should identify specific areas of disagreement with the hearing officer's recommendation and that no new evidence will be accepted.
 5. The Board receives a copy of the administrative record (i.e., the applicant's file, the hearing officer's recommendation, the applicant's response, and the audio files from the evidentiary hearing) prior to the hearing.
 - a. Board members must review the hearing officer's recommendation and any response the applicant may submit.
 - b. Board members may review the administrative record (or portions of it) if they wish. However, if members disagree with proposed findings of fact, the Board members must review the relevant portion of the administrative record.
 6. The Board hearing takes place.
 - a. The applicant has the option of attending but is not permitted to speak.
 - b. The Board does not accept new evidence or testimony and does not ask questions.
 - c. At the hearing, the Board adopts, modifies, or rejects the hearing officer's recommendation.
 7. Following the Board hearing, the executive director prepares an order on the Board's behalf.

Draft procedures

1. After the Board conducts an expedited review, the applicant is scheduled for the evidentiary hearing.
 - a. The applicant is given at least 20 days notice of the evidentiary hearing.
 - b. The evidentiary hearing takes place within 45 days following the expedited review.
2. A hearing officer conducts the evidentiary hearing, at which the applicant presents testimony and evidence. The applicant is not required to present all evidence at the evidentiary hearing.
3. Following the evidentiary hearing, the hearing officer prepares a recommended order. (In some cases, the hearing officer may leave the administrative record open for a short period of time after the hearing for the applicant to submit additional evidence.)
4. Within 80 days of the hearing, the Board hearing is scheduled to take place.
 - a. The applicant is given at least 20 days notice of the Board hearing, along with a copy of the hearing officer's recommendation.
 - b. The applicant may submit an optional written response to the hearing officer's recommendation. Applicants are told that the written response

- should identify specific areas of disagreement with the hearing officer's recommendation. The written response may include new evidence.
- c. Applicants are told that they may introduce testimony or evidence at the Board hearing and that they should be prepared to answer questions from the Board.
 - d. Applicants may be permitted to attend hearings by telephone. The Board chairperson will consider requests for telephonic hearings.
5. The Board receives a copy of the administrative record (i.e., the applicant's file, the hearing officer's recommendation, the applicant's response and any new evidence, and the audio files from the evidentiary hearing) prior to the hearing.
- a. Board members must review the hearing officer's recommendation and any response and evidence the applicant may submit.
 - b. Board members must carefully review the entire administrative record, including all documents in the file and the audio recordings, regardless of whether the Board members plan to change the findings of fact.
6. The Board hearing takes place.
- a. The applicant has the option of attending and is permitted to introduce new evidence and testimony.
 - b. The Board members may ask questions of the applicant.
 - c. The Board may have a limited ability to constrain the applicant's time to present new evidence or testimony.
 - d. At the hearing, the Board adopts, modifies, or rejects the hearing officer's recommendation.
7. Following the Board, hearing, the executive director prepares an order on the Board's behalf.

Issues to consider

Board members may wish to review the August 19 draft minutes, which summarize the Board's discussion about whether to accept new evidence at Board hearings. Below, I emphasize certain points in that discussion and raise new issues for you to consider. *Please note that by raising these issues, I'm not trying to discourage the Board from changing its current process.* Rather, I simply want to make sure the Board has considered all the possible ramifications of a policy change.

Whatever the Board decides, I respectfully ask that the Board try to achieve some stability in the hearing process, which the Board has changed significantly several times over the past several years—in some cases, due to court rulings or statutory changes. If the Board considers a policy change, I would ask that the Board avoid, to the degree possible, a trial run of a new process.

- Board members should be willing to devote more time preparing for meetings by carefully reviewing the entire administrative record, including closely listening to the audio files.
 - Board members won't know what evidence the applicant might submit at the Board hearing, so a thorough review is necessary.

- The Board won't have as much time as the hearing officer to review evidence submitted at the hearing—the hearing officer would be able to review the evidence after the hearing had concluded—and examine it in light of other evidence in the record, so familiarity with the record will help the Board make sense of new evidence.
- Applicants may submit testimony or make claims about evidence at the Board hearing that is not reliable, regardless of the applicants' intentions. Therefore, it's necessary for Board members to be thoroughly familiar with the record to assess applicants' claims.
- Board members should be prepared for some applicants to bring in a lot of evidence, which will take time to review.
- Board members (and their employing agencies, if applicable) should be aware that Board meetings may last longer—in some cases, even into the early afternoon.
- Board members will need to spend more time amending hearing officers' recommendations to incorporate new evidence in the findings of fact and to make appropriate alterations to other portions of the proposed order.
- Board members probably will want to have copies of the administrative record in front of them. If so, Board members should decide whether they want to have photocopies of records rather than scanned files, or whether they want to authorize purchasing low-end laptop computers for each member to have access to scanned files at the meeting. The original administrative record could be made available instead of copies or scanned files. However, sharing this record among five Board members may be problematic and time-consuming, especially if the applicant brings in a lot of evidence. In addition, an applicant who presents testimony may prompt questions in a Board member's mind, and that Board member may want easy access to the administrative record to remember particular documents.