



ARIZONA BOARD OF FINGERPRINTING

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Final Minutes for Public Meeting

Held September 16, 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 9:41 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.

CALL TO THE PUBLIC

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

APPROVAL OF MINUTES

Mr. LeHew made a motion to approve the draft minutes from September 3, 2010, and Mr. Baker seconded the motion, which passed 5–0.

ADMINISTRATIVE-HEARING PROCESS

Mr. Easaw referred Board members to Mr. Seavers's September 14, 2010 memo on the administrative-hearing process (see Attachment 1).

Mr. LeHew made a motion to adopt the alternative proposal outlined in the September 14, 2010 memo, and Mr. Baker seconded. The motion passed 5–0.

ADJOURNMENT

Mr. LeHew moved to adjourn the meeting, and Ms. Pipersburgh seconded the motion, which passed 5–0. Mr. Easaw adjourned the meeting at 9:44 a.m.

Minutes approved on October 29, 2010

Dennis Seavers, Executive Director



Arizona Board of Fingerprinting Memo

TO: Board members
FROM: Dennis Seavers
C: Christopher Munns
Date: September 14, 2010
SUBJECT Draft administrative-hearing procedures

At its September 3, 2010 meeting, the Board discussed whether to accept new evidence at the Board hearing following an evidentiary hearing.¹ The Board decided not to adopt procedures that would allow applicants to present new evidence at the Board hearing and that would allow the Board to ask the applicants questions. However, the Board considered an alternative proposal that would allow applicants to submit new evidence by a certain deadline before the Board hearing. The Board requested that I draft procedures that would give Board members an idea of how hearings would be conducted if the alternative proposal were adopted.

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.

One issue discussed at the recent Board meetings was whether the Board could remand cases to the hearing officer to address outstanding questions. Regardless of whether the Board changes its procedures, the Board could remand cases to the hearing officer, as long as the applicant waives the statutory requirement that the Board make a decision within 80 days of the evidentiary hearing.

Current procedures

1. After the Board conducts an expedited review, the applicant is scheduled for the evidentiary hearing.

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.

- 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 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 at least 10 days prior to the Board hearing. 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 at least 10 days prior to the Board hearing. Applicants are told that the written response should identify specific areas of disagreement with the hearing officer's recommendation.
 - c. The applicant may submit new evidence at least 10 days prior to the Board hearing.²
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. Depending on what evidence the applicant submits, Board members may be required to carefully review the entire administrative record, including all documents in the file and the audio recordings.
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 (apart from any submitted at least 10 days prior to the Board hearing) or testimony and does not ask questions. Board members cannot consider new evidence submitted after the 10-day deadline.
 - 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.

Advantages and disadvantages of the alternative proposal

Advantages

- The procedures would address Board members concerns about cases where applicants' circumstances change between the evidentiary and Board hearings and Board members would like to know about these changed circumstances. For example, if an applicant testified at the evidentiary hearing that he would complete domestic-violence classes within three weeks, Board members may

² The 10-day deadline is in the current procedures for written responses. However, the Board could choose a different deadline, as long as the applicant has a reasonable amount of time to respond. For example, the Board could set the deadline at five days before the Board hearing rather than 10, although the Board would then have less time to review the material.

want to know whether he actually completed the classes. Under the draft procedures, the applicant could submit evidence that he completed the classes.

- Board members would receive the evidence prior to the Board meeting, giving them time to review the materials and, as necessary, the administrative record (compared to the original proposal, in which Board members may have had to review new evidence at the Board hearing).
- Although the Board would have to accept new reference letters, the Board would not have to spend time at the Board hearing listening to testimonial evidence (i.e., people attending the Board hearing to provide character testimony), which might have taken a long time at Board hearings.

Disadvantages

- Board members might receive a significant amount of evidence just a few days before the Board hearing, particularly if the hearing officer recommended that an application be denied. In addition, depending on the evidence submitted, Board members may need to review the administrative record. Board members therefore may need to spend more time reviewing cases.
- Board members will not be able to ask the applicant questions at the Board hearing. Referring to the example given in the first bullet under “Advantages” above, the Board members would not be able to ask whether the applicant completed classes if the applicant failed to submit evidence within the 10-day deadline of having completed the classes.³
- Meetings may take longer, since Board members may need to alter the proposed findings of fact and conclusions of law in order to incorporate the new evidence.
- The Board would not be able to limit the types of documentary evidence submitted.
- If the applicants submit evidence after the 10-day deadline, the Board must disregard the evidence.

³ Hearing officers can notify applicants that they may submit new evidence and should do so if the applicants want the Board to consider the changed circumstances.