

ARIZONA BOARD OF REGENTS
POLICY MANUAL

8-207 Rules of Practice and Procedure before the Director

Revision Dates

6/7/1991 (adopted)

A. Scope of Article

1. These Rules of Practice and Procedure govern the procedures to be followed with respect to:
 - a. Hearing upon denial of a permit.
 - b. Hearing in connection with revocation of a permit.
2. These Rules shall be constructed to secure the just, speedy, and inexpensive determination of every such proceeding.
3. In connection with any particular proceeding, reference shall also be made to any special procedural requirements prescribed by statute or by other Articles in this Chapter, which special requirements, if applicable, shall govern.

B. Definitions.

In this Article, unless the context otherwise requires:

1. "Applicant" means an institution, organization or corporation organized for scientific, research or land use planning purposes which seeks to obtain a permit.
2. "Arizona State Museum" means that State museum referred to in A.R.S. § 15-1631 and which is directed and managed by the Arizona Board of Regents.
3. "Contested case" means any of the proceedings referred to in 8-207(A)(1).
4. "Director" means the Director of the Arizona State Museum or an official designee of the Director.
5. "Hearing Officer" means the person appointed by the Director pursuant to 8-207(J) to hear a contested case and make recommendations to the Director.

6. "Party" means the Arizona State Museum and each person named or admitted as a party in a contested case.
 7. "Permit" means an Arizona Antiquities Act Permit for Archaeological or Paleontological Investigations on Lands Owned or Controlled by the State of Arizona as required by A.R.S. § 41-841 et seq.
 8. "Person" means any individual, partnership, corporation, association or public or private organization.
 9. "University Counsel" means the Head University Attorney for the University of Arizona or his duly appointed assistant.
- C. Appearance and practice before the Director.
1. Any person may appear in his own behalf or by counsel.
 2. The University Counsel shall act as the representative of the Arizona State Museum in any proceeding before the Director brought under this Article and shall have the duty to present evidence and arguments on behalf of the Arizona State Museum.
 3. When an attorney, other than the University Counsel, intends to appear before the Director, he shall promptly advise the Director of his name, address and telephone number and the address of the person on whose behalf the appearance is made.
- D. Filing; service.
1. All papers allowed or required to be filed with the Director shall be personally filed at the office of the Director or may be mailed, pursuant to Subsection 4, to the Director of the Arizona State Museum, University of Arizona, Tucson, Arizona 85721. No papers shall be deemed filed until actually received by the Director.
 2. Unless otherwise provided by these Rules, copies of all papers filed shall, at or before the time of filing, be served on the hearing officer, if any, the University Counsel and all parties to the proceeding.
 3. Whenever under these Rules service is required or allowed to be made upon a party represented by an attorney, the service shall be made upon the attorney, unless service upon the party himself is ordered by the Director.
 4. Service upon the attorney, or upon the party, shall be made personally, or by mail, by enclosing a copy thereof in a sealed envelope and depositing

same, postage prepaid, in the United States mail, addressed to the party to be served or his attorney at the address as shown by the records of the Director. Service by mail is complete upon mailing.

5. All notices of hearings and final decisions issued by the Director shall be, when mailed, mailed by certified mail.
6. Every paper filed with the Director under these Rules shall be signed by the party filing it or by at least one attorney, in his individual name, who represents the party. The signature constitutes a certificate by the signer that he has read the paper, that to the best of his knowledge, information and belief there is good ground to support it, and that it is not interposed for delay.

E. Amendments.

Except where otherwise provided by Law or these Rules, the Director may amend any notice of hearing or prior order issued by the Director or permit the amendment of any answer where justice requires such amendment.

F. Time computations; enlargement.

1. In computing any period of time prescribed or allowed by these Rules, by order of the Director, or by any applicable statute, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
2. When by these Rules or by a notice given thereunder or by order of the Director, an act is required or allowed to be done at or within a specified time, the Director for cause shown may in his discretion, with or without a motion or notice, order the period enlarged, except that:
 - a. After the expiration of the specified period the Director may permit the act to be done only upon motion made and only where the failure to act was the result of excusable neglect.
 - b. In no event shall the Director extend the time for taking any action under Section 8-207(G) or Sections (1) or (5) of 8-207(N).

G. Commencement of proceedings; notice of hearing.

1. An applicant who is denied a permit by the Director without prior hearing or opportunity for hearing may file with the Director a request for hearing seeking review by the Director of the order of denial. Such a request for hearing must be filed with the Director within fifteen days of service of the letter or order to be reviewed and shall identify with specificity the action or order for which review is sought. If the party seeking review is represented by counsel, then the name, address and telephone number of the attorney should be included in the request for hearing.
2. In proceedings in which the Director is considering the revocation of a permit or upon the filing of a request for hearing under Subsection A, the Director shall issue a notice of hearing scheduling the matter for hearing in accordance with these Rules.
3. The parties in any hearing brought under this Article shall consist of at least the Arizona State Museum and either the applicant denied a permit or the permittee whose permit is sought to be revoked.

H. Answer to notice of hearing.

1. In any notice of hearing issued by the Director, the Director may indicate that one or more parties may file an answer to the assertions contained in the notice of hearing. Even though not directed to do so, any party may file such an answer.
2. Except where a different period is provided by the notice of hearing, the party directed to file an answer shall do so within twenty days after issuance of the notice of hearing. Where amendments to the assertions contained in the notice of hearing are made subsequent to the notice of hearing, one or more of the parties may be required to answer within a reasonable time the amended assertions.
3. If a party fails to file an answer required by this Rule within the time provided, such party shall be deemed in default and the proceeding may be determined against the party by the Director and one or more of the assertions contained in the notice of hearing may be deemed to be admitted.
4. Any defenses not raised in the answer shall be deemed to be waived.

I. Conferences; continuance of hearings.

1. The Director, on application of a party, or on his own motion, may call a conference with the parties at any time for the purpose of clarifying the procedural steps to be followed in a proceeding, or clarifying or limiting legal or factual issues involved in a proceeding.

2. The Director, on his own motion, or upon motion of a party and for good cause shown may continue or reschedule any hearing before the Director.

J. Depositions

1. Any party desiring to take a deposition shall file a written motion, setting forth the reasons why such depositions should be taken, the name and address of the witness, the matters concerning which it is expected to question the witness, and the documents, if any, sought to be produced and the time and place proposed for the taking of the deposition.
2. Any party desiring the issuance of a subpoena to compel the appearance of a witness or the production of documents at any hearing or deposition shall file a written ex parte application therefore setting forth the name and address of the witness, the matters concerning which it is expected to question the witness, the documents sought to be produced, and the time and place of the hearing or deposition.
3. The Director may, in his discretion, issue an order permitting a deposition to be taken or issue a subpoena, or both, consistent with the purpose and requirements of A.R.S. § 41-1010.A.4.

K. Hearing officers.

1. The Director may appoint a hearing officer to hear any contested case. A hearing officer appointed by the Director may make all determinations and enter all orders and process which the Director is authorized to make or issue under these Rules or any other order necessary for the orderly conduct of the hearing except orders on motions for rehearing, final decisions or other orders or process which the hearing officer is specifically prohibited from entering by these Rules or by order of the Director.
2. Any party in a proceeding before the Director may file an affidavit for change of hearing officer alleging any of the grounds set forth in A.R.S. § 12-409. An affidavit for change of hearing officer shall be filed within ten days after discovery that grounds exist for a change of hearing officer and in no event later than ten days before the date set for hearing. Copies of an affidavit filed under this Subsection shall be served as provided in 8-207(D) and upon receipt of a copy thereof the hearing officer shall take no further action until the affidavit has been acted on by the Director, except that the hearing officer may make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the proceeding may be transferred to another hearing officer.

3. Within thirty days after the conclusion of the proceeding, the hearing officer shall submit to the Director written recommendations which shall include proposed findings of fact, conclusions of law, and order. Before submitting his recommendations to the Director the hearing officer may submit a draft thereof to the parties for the purpose of hearing their comments and suggestions.
4. The hearing officer's recommendations may be approved or modified by the Director. The Director's decision approving or modifying the hearing officer's recommendations shall be the final decision of the Director, subject to the filing of a motion for rehearing under 8-207(N).

L. Hearing.

1. At any hearing, conduct which, in the discretion of the Director, is deemed contemptuous, shall be grounds for exclusion from the hearing.
2. The failure of a party to appear at a scheduled hearing shall be treated as consent to the decision of the Director arising out of the hearing.

M. Decisions.

The final decision in a contested case before the Director shall be signed by the Director and shall state separately the findings of fact, conclusions of law and order of the Director. The decision may incorporate by reference, with or without modifications, the recommendations of the hearing officer.

N. Rehearing.

1. Except as provided in Subsection 7, any party in a contested case before the Director who is aggrieved by a decision rendered in such case may file with the Director, not later than ten days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefore.
2. A motion for rehearing under this Rule may be amended at any time before it is ruled upon by the Director. A response may be filed within ten days after service of such motion by any other party. The Director may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
3. A rehearing of the decision may be granted for any of the following causes materially affecting the moving party's rights:

- a. Irregularity in the proceedings before the Director or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 - b. Misconduct of the Director, his employees or his hearing officer or the prevailing party;
 - c. Accident or surprise which could not have been prevented by ordinary prudence.
 - d. Newly discovered evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 - e. Excessive or insufficient penalties;
 - f. Error in the admission or rejection of evidence or other errors of law occurring at the hearing;
 - g. That the decision is not justified by the evidence or is contrary to law.
4. The Director may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any of the reasons set forth in Subsection 3. An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
 5. The Director, within the time for filing a motion for rehearing under this Rule, may on his own initiative order a rehearing or review of his decision for any reason for which he might have granted a rehearing on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Director may grant a motion for rehearing, timely served, for reason not stated in the motion. In either case, the order granting such a rehearing shall specify the grounds therefore.
 6. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within ten days after such service serve opposing affidavits.
 7. If in a particular decision the Director makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health, and safety, and that a rehearing or review of the decision is impractical, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final

decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Director's final decision.

Policy History

6/7/1991 Approved by the Board on second reading.

Related Information