

How to Challenge and Overturn a State Agency Decision Under the Administrative Review Act



Adrian Hofmeyr, Partner

- Litigation & Dispute Resolution



Overturning Agency Decisions

Challenging State Agency Decisions under
the Administrative Review Act

Presented by: Adriane Hofmeyr, Partner

THE PROBLEM

- Businesses in ***state-regulated industries*** often face a negative decision or action by their regulating authority.
- Businesses can challenge ***in court*** the denial or suspension of a license or permit, or granting of permit to competitor.

The Solution

- Administrative Review Act, A.R.S. § 12-901 et seq. allows judicial review of administrative decisions.
- The ARA has its own set of rules - *Arizona Rules of Procedure for Judicial Review of Administrative Decisions*.

Is An Appeal, Not Litigation

- Applies to an "**administrative agency**," e.g. ADHS, ADWR, ADEQ, AHCCCS, ADOT, ADES, ADFI, school districts, BOR, ROC, and more. A.R.S. § 12-901(1). *Excludes* decisions of county or city or town, unless by specific statute.
- Can challenge "**administrative decision**" = a decision affecting "rights, duties or privileges of persons." A.R.S. § 12-901(2.)



Very Fast Deadline

- Have **35 days** from date decision is served on you. A.R.S. § 12-904(A).
- Must file a "**Notice of Appeal**" in superior court. A.R.S. § 12-905.
- Is **jurisdictional**, i.e. this defense cannot be waived. A.R.S. § 12-902(B); *Smith v. Arizona Citizens clean Elections Com'n*, 212 Ariz. 404, ¶29, 132 P.3d 1187 (2006).

Notice Of Appeal

- A.R.S. § 12-904(A); A.R.S. § 12-909(A); *Rule 4*.
- Identify the **final administrative decision sought** to be challenged – ATTACH IT.
- A "**statement of the issues**" – GO BIG.
- A "**statement of the findings**".
- Ask for **fees**.
- Is much more detailed than a normal Notice of Appeal. Will **waive** issues not raised herein.
- **Exhaustion Of Administrative Remedies:** Only if statute says so. For e.g., A.R.S. § 41-1092.03(A).
- **Service:** Must serve Notice of Appeal on agency AND "all other parties to the proceeding before the agency" (BUT NEED NOT NAME ALL PARTIES). A.R.S. § 12-906.
- **Appellee:** Name AGENCY as Appellee. Do NOT need to name other parties (they will intervene.) A.R.S. § 12-908.
- **Briefs:** Opening, Answering, Reply. *Rule 7*.
- **Time For Filing Briefs:** 45/45/20 days. *Rule 6*.
- **Standing:** i.e. when can you interfere with someone else's license? Must be person appearing before agency or given notice of proceedings before agency. *Roer v. Superior Court in and For Coconino County*, 417 P.2d 559 (App. 1966).

Not Limited To Record Below

- Can introduce **new exhibits and witnesses**. A.R.S. § 12-910(A) and (B).
- Can ask for an **evidentiary hearing**. A.R.S. § 12-910; *Rule 10*.
- Not entitled to **discovery**. *Rule 12*.
- May be entitled to a "**jury trial**." A.R.S. § 12-910(C); *Rule 11*.
- Can ask for a **stay** of the decision. A.R.S. § 12-911(A)(1); *Rule 3*.
- Must ask for "**findings of fact**." A.R.S. § 12-911(C).

Standard Of Review

Standard of review is very **deferential** to the agency

- **The test:** The court "shall" affirm the agency action unless the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious, or is an abuse of discretion. A.R.S. § 12-910(E).
- But, the court is “free to reach its own conclusion” when the issue involves interpretation of law. *Romo v. Kirschner*, 181 Ariz. 239, 240, 889 P.2d 32 (App. 1995).

Right To Recover Attorneys' Fees

- A.R.S. § 12-348 entitles ("shall") you to fees if you “prevail by an adjudication on the merits.” This applies to suits under the ARA and special actions.
- Not exposed to fees. A.R.S. § 12-348(A).
- But statutory cap of \$10K on fees. A.R.S. § 12-348(E).
- Can override cap with **private attorney general doctrine**. *Arnold v. ADHS*, 160 Ariz. 593, 775 P.2d 521 (1989).
- A.R.S. § 12-2030 (if your suit is “to compel a state officer ... to perform an act imposed by law”).

Public Records Request

- A.R.S. § 39-101 *et seq.*
- *Always do one* - no form required.
- Agency must provide copies "**promptly.**" A.R.S. § 39-121.01(D)(1).
- If denied (or insufficient or you're blown off), you can "appeal the denial through a **special action** in superior court." A.R.S. § 39-121.02(A).
- "Litigants have a greater right to access than public generally." Arizona Agency Handbook relating to Public Records, citing *Grimm v. Ariz. Bd. Of Pardons and Paroles*, 115 Ariz. 260, 269, 564 P.2d 1227, 1235-6 (1977).
- May get fees and damages.

Filing Which ... By Special Action

- Against actions of county, city or town.
- Statutory (e.g. A.R.S. § 9-462.06, for city or town zoning decision) or discretionary (by petition) (e.g. county zoning decision).
- Follow ***Rules of Procedure for Special Actions***.
- **No statutory deadline; laches** applies (unless statute). *Rash v. Town of Mammoth*, 233 Ariz. 577, ¶ 16, 315 P.3d 1234 (App. 2013).
- Only *three* questions, including **arbitrary and capricious** or **abuse of discretion**. *Rule 3*.

Questions?



Adriane Hofmeyr

Tucson Office

(520) 770-8721

adriane.hofmeyr@quarles.com