

TITLE 10. LAW

CHAPTER 3. DEPARTMENT OF LAW
CIVIL RIGHTS DIVISION

(Authority: A.R.S. § 41-1401 et seq.)

Articles 1 through 3, consisting of Sections R10-3-01 through R10-3-310, adopted effective September 2, 1977.

Former Article 1, consisting of Sections R10-3-01 through R10-3-18, repealed effective October 11, 1977.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R10-3-100 through R10-3-109, adopted effective September 2, 1977 (Supp. 77-5).

Former Article 1, consisting of Sections R10-3-01 through R10-3-18, repealed effective October 11, 1977.

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ARTICLE 1. GENERAL PROVISIONS**R10-3-100. Purpose**

These regulations set forth the procedures established by the Arizona Civil Rights Division for carrying out its responsibilities in the administration and enforcement of the Arizona Civil Rights Act of 1965, as amended. Based upon its experience in the administration of the Arizona Civil Rights Act, and upon its evaluation of suggestions for amendments submitted by interested persons, the Division may from time to time amend and revise these procedures.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-101. Definitions

- A. The term "Act" shall mean the Arizona Civil Rights Act of 1965, as amended.
- B. The term "Division" shall mean the Arizona Civil Rights Division, Department of Law, or any of its designated agents.
- C. The term "Board" shall mean the Arizona Civil Rights Advisory Board as defined in A.R.S. § 41-1401.
- D. The terms "person", "employment agency", "labor organization", "employer", "Charging Party", "Respondent", and "places of public accommodation" shall have the same meanings as set forth in the Act.
- E. The term "Commission" shall mean the United States Equal Employment Opportunity Commission.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-102. Where to file a charge

A charge may be filed at the offices of the Division or with any designated agent of the Division.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-103. Confidentiality of charge

Neither a charge, nor information obtained pursuant to the Act, nor information obtained from records required to be kept or reports required to be filed pursuant to the Act shall be made matters of

public information by the Division, prior to the institution of any proceedings in any federal or state court resulting from the charge. This provision does not apply to such earlier disclosures to the Charging Party, Respondent, witnesses and representatives of interested federal and local agencies as may be appropriate or necessary for the carrying out of the Division's functions under the Act, nor to the publication of data derived from such information in the form which does not reveal the identity of the Charging Party, Respondent, or persons supplying the information.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-104. Withdrawal of charge

- A. Prior to the execution of a conciliation agreement, a charge filed by a Charging Party may be withdrawn only with the consent of the Division.
- B. The request for withdrawal shall be in writing and shall set forth the reasons for such request. The request must be signed by the Charging Party.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-105. Pre-determination settlement procedure

- A. At any time subsequent to a preliminary investigation and prior to the issuance of findings of fact, the Division or its designated agent may engage in pre-determination settlement discussions. The Executive Director or an assistant attorney general designated by the Director may make and approve settlements, on behalf of the Division.
- B. In the alternative, the Division may facilitate a settlement between the Charging Party and the Respondent by permitting withdrawal of the charge pursuant to R10-3-104.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-106. Application for reconsideration; reopening of proceedings

The Charging Party may apply for reconsideration of dismissal of the charge. The application shall be in writing, under oath, stating specifically the grounds upon which it is based, and shall be filed within 20 days from the date of the Charging Party's receipt of the Division's decision. Such application may be granted or denied at the discretion of the Division. The Division, may on its motion, reconsider a dismissal of a charge or any findings of fact it has issued.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-107. Posting of Act

- A. Every place of public accommodation, employer, employment agency and labor organization or person subject to the Act shall post and keep posted in conspicuous places upon its premises where notices to patrons, employees, applicants for employment and members are customarily posted a notice to be prepared and distributed by the Division, which shall set forth excerpts from, or summaries of, the Act and such relevant information which the Division deems necessary to explain the Act. Such notices may be obtained from the office of the Division.
- B. Willful failure to post such notices after having been furnished such notices by the Division shall be punishable by a fine of not more than \$100.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-108. Certification of documents or records

The Executive Director of the Division, or any other employee of the Division as may be designated by the Director, is authorized and empowered to certify all documents or records which are a part of the files and records of the Division.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-109. Construction of rules, availability

- A. These rules and regulations shall be liberally construed to secure a just, speedy and inexpensive determination of the issues presented. The Division does not intend that a failure to comply with these rules should constitute a jurisdictional or other bar to administrative or legal action unless otherwise required by statute.
- B. The rules and regulations of the Division shall be available to the public at the offices of the Division.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

ARTICLE 2. EMPLOYMENT DISCRIMINATION

R10-3-200. Charges filed by or on behalf of aggrieved persons or by a member of the Division; submission of information

- A. A charge that any person has engaged in or is engaging in an unlawful employment practice within the meaning of the Act may be filed by or on behalf of a person claiming to be aggrieved. A charge on behalf of a person claiming to be aggrieved may be filed by any person, agency, or organization. A charge shall be deemed to have been filed by or on behalf of a person claiming to be aggrieved if received from the Commission. The charge need not identify by name the person on whose behalf it is filed. The person filing the charge, however, must provide the Division with the name and address of the named person on whose behalf the charge is filed. During the Division's investigation, Division personnel shall verify the authorization of such charge by any named person on whose behalf such charge is filed. The Division shall keep such information confidential and, in transmitting information to the Commission in regards to such charge, shall not disclose such information to the Commission except on condition that the identity of the person on whose behalf the charge is filed be kept confidential, pursuant to the Commission's regulations governing confidentiality. If this condition is violated by the Commission, the Division may decline to honor subsequent requests for such information. A person filing a charge on behalf of an aggrieved person shall be considered a party to the Division's proceedings with respect to receiving notice at each stage in which notice is sent to parties.
- B. The Division may receive information concerning alleged violations of the Act from any person. Where the information discloses that a person is entitled to file a charge with the Division, assistance will be rendered in the filing of the charge. A member of the Division in accordance with these rules, may file a charge.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-201. Charges by members of the Division

Any member of the Division with the written approval of the Executive Director may file a charge.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-202. Forms

The charge shall be in writing and signed, and shall be sworn to before a notary public, a member of the Division, a designated agent of the Division, or other persons duly authorized by law to administer oaths and take acknowledgments. Charge forms are available to all persons at the Division. Appropriate assistance in filling out forms may be rendered to Charging Parties by the Division.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-203. Contents: amendment

- A.** Each charge shall contain the following:
1. The full name and address of the Charging Party.
 2. The full name and address of the Respondent.
 3. A clear and concise statement of the facts including pertinent dates constituting the alleged unlawful employment practice.
 4. If known, the approximate number of employees of the Respondent employer.
- B.** Notwithstanding the provisions of subsection (A) of this rule or R10-3-202, a charge is deemed filed when the Division receives from the Charging Party a written statement sufficiently precise to identify the parties and to describe generally the unlawful action or practice or if received from the Commission. A charge may be amended
1. To cure technical defects or omissions, including but not limited to, failure to swear to the charge, or
 2. To clarify and amplify allegations.
- The amendments alleging acts occurring before the filing of the charge which constitute unlawful employment practices directly related to or growing out of the subject matter of the original charge shall be deemed to relate back to the original filing date.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-204. Time of filing charge

A charge of discrimination in employment shall be filed within 180 days from the date upon which the alleged discriminatory practice or act occurred. If the alleged discriminatory practice or act is of a continuing nature, the date of the occurrence of the alleged discriminatory practice or act shall be deemed to be any date subsequent to the commencement of the alleged discriminatory practice or act up to and including the date upon which the lawful practice has ceased.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-205. Service of charge, orders and other process

- A.** Notice of charge: A charge alleging an act or practice of discrimination in employment shall be served upon the Respondent within ten days of the date that the charge is filed with the Division.
- B.** Service of process: Charges, orders and other process and papers of the Division may be served personally or by registered or certified mail, return receipt requested. The verified return of the individual serving the same, setting forth the manner of service, and the return Post Office receipt when the service is by registered or certified mail, shall be proof of service.
- C.** Service upon duly authorized representatives: If a party appears by duly authorized representative, all papers other than the charge, notice of hearing, and final decisions and orders may be served, as herein provided, upon such duly authorized representative with the same force and effect as those served upon the party.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-206. Investigations

- A.** By whom made: After a charge is filed and found to be in proper order, the Division shall make an investigation of the charge.
- B.** Position statements: The Division may request a party or witness to the proceeding to file on such forms as the Division prescribes a statement or report in writing, under oath, as to all the facts and circumstances concerning a charge filed with the Division pursuant to A.R.S. § 41-1481.
- C.** Issuance of interrogatories: During the course of investigation, any member of the Division may cause to be issued interrogatories upon any party or witness to the proceedings.
- D.** Answers to be sworn to by answering party: Interrogatories issued pursuant to R10-3-206(C) shall require that the person addressed answer the interrogatories under oath.
- E.** Answers to interrogatories to be returned to the Division within 14 days of receipt: Interrogatories issued pursuant to R10-3-206(C) shall be answered and returned to the Division within 14 days of receipt of the interrogatories.
- F.** Extension of time for answering interrogatories: Any person served with interrogatories issued pursuant to R10-3-206(C) may request of the Division a reasonable extension of time in which to answer the interrogatories. In no event, shall such extension of time exceed 21 days from the original date upon which said interrogatories were due. In computing any time period under R10-3-206(A) through (E), such computation shall be governed by Rule 6A, Arizona Rules of Civil Procedure, A.R.S. Volume 16.
- G.** Taking of evidence -- investigation:
1. In connection with the investigation of a charge filed under the Act, the Division or its duly authorized employees shall at all reasonable times have access to, for the purpose of examination, and have the right to copy any evidence of any person being investigated, provided such evidence relates to unlawful practices covered by the Act and is relevant to the charge under investigation.
 2. For the purpose of investigations conducted by the Division:
 - a. The Division may issue a subpoena compelling the attendance and testimony of witnesses or requiring the production for examination or copying of documents provided such evidence relates to unlawful practices covered by the Act and is relevant to the charge which is the subject matter of the hearing or investigation. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Division to revoke, limit or modify the subpoena. The Division shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to unlawful practices covered by the Act, is not relevant to the charge which is the subject matter of the hearing or investigation does not describe with sufficient particularity the evidence whose production is required, or is unduly burdensome or oppressive. Any member of the Division, or any agent designated by the Division may administer oaths or affirmations, examine witnesses and receive such evidence.
 - b. Any person appearing before the Division shall have the right to be represented by counsel.
 - c. The Superior Court, upon application by the Division or by the person subpoenaed, shall have jurisdiction to issue an order

- i. Requiring such person to appear before the Division, or its duly authorized agent, there to produce evidence relating to the matter under investigation if so ordered; or
- ii. Revoking, limiting or modifying the subpoena or conditioning issuance of the subpoena upon payment of costs or expenses incurred to comply with the subpoena if in the court's opinion the evidence required does not relate to unlawful practices covered by the Act is not relevant to the charge which is the subject matter of the hearing or investigation, does not describe with sufficient particularity the evidence whose production is required or is unduly burdensome or oppressive.

Any failure to obey such order of the court may be punished by such court as a contempt.

- H. Taking of testimony -- mechanical recording: A taking of testimony pursuant to R10-3-206(G) may be recorded by other than stenographic means, including but not limited to tape recording.
- I. Right to inspect or copy data: A person who submits data or evidence to the Division may retain or, on payment of lawfully prescribed costs, procure a copy or transcript if available, except that a witness may for good cause be limited to inspection of the official transcript of his testimony.
- J. Authority to issue subpoenas: A subpoena issued pursuant to A.R.S. § 41-1403 shall be issued by the Executive Director or an Assistant Attorney General designated by the Division.
- K. Modification or revocation of subpoena: When the party subpoenaed petitions the Division pursuant to A.R.S. § 41-1403(B)(1) for revocation or modification of the subpoena, the decision to grant and or deny the petition shall be made by the Executive Director or an Assistant Attorney General assigned to the Division.
- L. Subpoenas requested by Charging Parties or Respondents: No member of the Division will issue a subpoena on behalf of a person filing a charge, a person on whose behalf a charge was filed, or a Respondent.
- M. Dismissal of a charge: Upon completion of an investigation, if the Division determines that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the Charging Party and the Respondent, in writing, of such action. Notification to the Charging Party shall include
 - 1. A notice of right to request reconsideration of dismissal,
 - 2. A copy of the Division's finding of no reasonable cause, and
 - 3. Advice concerning his or her rights to proceed in court under the Act.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-207. Reasonable cause, conference, conciliation and persuasion

- A. If the Division determines that a charge fails to state a valid claim for relief under the Act or that there is not reasonable cause to believe that a charge is true, the Division shall dismiss the charge. Where, however, it determines that there is reasonable cause to believe that an unlawful employment practice has occurred or is occurring, it shall endeavor to eliminate such practice by informal methods of conference, conciliation, and persuasion.
- B. The Division shall promptly notify the Charging Party and the Respondent, or in the case of a charge filed by the Division,

the Respondent of its determination under subsection (A) of R10-3-207.

- C. Conciliation agreement: In conciliating a charge in which a determination of reasonable cause has been made, the Division shall attempt to achieve a just resolution and to obtain assurances that the Respondent will eliminate the unlawful employment practices and take appropriate affirmative action. Conciliation agreements shall be in writing, and copies shall be sent to the parties. Proof of compliance with the conciliation agreement shall be obtained by the Division before the charge is closed.
- D. Refusal of Respondent to cooperate: Should a Respondent fail or refuse to confer with the Division or its representatives, or fail to refuse to make a good faith effort to resolve the dispute, the Division may terminate its efforts to conciliate the dispute. In such event, the Respondent shall be notified promptly, in writing, that such efforts have been unsuccessful and will not be resumed except upon the Respondent's written request within the time specified in such notice.
- E. Confidentiality of conciliation discussions: Nothing that is said or done during and as a part of the endeavors of the Division to eliminate unlawful employment practices by informal methods of conference, conciliation and persuasion may be made a matter of public information by the Division, or used as evidence in a subsequent proceeding without the written consent of the parties concerned.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-208. Notice to Charging Party of failure of conciliation

When the Division is unable to obtain a conciliation agreement after it has made a determination of reasonable cause, it shall so notify the Charging Party, and any federal, or local agencies to which the charge has been previously referred. Notification to the Charging Party shall include

- 1. A notice of failure of conciliation, and
- 2. Advice concerning his or her rights to proceed in court under the Act.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-209. Recordkeeping, preservation of records, and reports to the Division

Every employer, employment agency, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining including on the job training programs subject to this Act shall make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, preserve such records for such periods, and make such reports therefrom, as the Division deems reasonable, necessary or appropriate for the enforcement of this Act; provided, however, that no employer, employment agency, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining including on the job training programs required to file an EEO-1, -2, -3, or -4 Report with the Equal Employment Opportunity Commission shall be required to file a similar report with the Division unless specifically requested to do so by the Division.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

ARTICLE 3. VOTING RIGHTS AND PUBLIC ACCOMMODATION DISCRIMINATION

R10-3-300. Filing of charge

A charge of discrimination under the voting or public accommodation sections of the Act shall be filed with the Division only by a person, referred to as the Charging Party, claiming to be aggrieved by the alleged discriminatory practice or act.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-301. Form of charge

The charge shall be in writing and signed and shall be sworn to before a notary public, a member of the Division, a designated agent of the Division, or other persons duly authorized by law to administer oaths or take acknowledgments. Charge forms will be supplied by the Division upon request. Appropriate assistance in filling out forms may be rendered to Charging Parties by the Division.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-302. Contents of charge

Each charge shall contain the following:

1. The full name and address of the Charging Party.
2. The full name and address of the Respondent.
3. A plain and concise statement of the facts constituting the alleged unlawful discriminatory practice or act.
4. The date or dates of the alleged unlawful discriminatory practice or act.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-303. Amendment of charge

Notwithstanding the provisions of R10-3-302, a charge is deemed filed when the Division receives from the Charging Party, a written statement sufficiently precise to identify the parties and to describe generally the unlawful action or practice. A charge may be amended:

1. To cure technical defects or omissions, including but not limited to failure to swear to the charge, or
2. To clarify and amplify allegations.

The amendments alleging acts occurring before the filing of the charge which constitute unlawful practices directly related to or growing out of the subject matter of the original charge shall be deemed to relate back to the original filing date.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-304. Time of filing charge

A charge of discrimination under the voting and public accommodation sections of the Act shall be filed within 60 days from the date upon which alleged discriminatory practice or act occurred.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-305. Service of charge, orders and other process

- A. A charge alleging an act or practice of discrimination in voting or public accommodation shall be served upon the Respondent within ten days of the date that the charge is filed with the Division.
- B. Service of process: Charges, orders and other process and papers of the Division may be served personally or by registered or certified mail, return receipt requested. The verified return of the individual serving the same, setting forth the manner of service, and the return Post Office receipt when the

service is by registered or certified mail shall be proof of service.

- C. Service upon duly authorized representatives: If a party appears by duly authorized representative, all papers other than the charge, notice of hearing, and final decisions and orders may be served, as herein provided, upon such duly authorized representative with the same force and effect as those served upon the party.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-306. Investigations and hearings

- A. By whom made: After a charge is filed and found to be in proper order, the Division shall make an investigation of the charge.
- B. Position statements: The Division may request a party or witness to the proceeding to file on such forms as the Division prescribes a statement or report in writing, under oath, as to all the facts and circumstances concerning a charge filed with the Division pursuant to A.R.S. § 41-1471.
- C. Issuance of interrogatories: During the course of investigation, the Division may cause to be issued interrogatories upon any party or witness to the proceeding.
- D. Answers to be sworn to by answering party: Interrogatories issued pursuant to R10-3-306(C) shall require that the person addressed answer the interrogatories under oath.
- E. Answers to interrogatories to be returned to the Division within 14 days of receipt: Interrogatories issued pursuant to R10-3-306(C) shall be answered and returned to the Division within 14 days of receipt of the interrogatories.
- F. Extension of time for answering interrogatories: Any person served with interrogatories issued pursuant to R10-3-306(C) may request of the Division a reasonable extension of time in which to answer the interrogatories. In no event shall such extension of time exceed 21 days from the original date upon which said interrogatories were due. In computing any time period under R10-3-306(A) through (E), such computation shall be governed by Rule 6(A), Arizona Rules of Civil Procedure, A.R.S. Volume 16.
- G. Taking of evidence -- investigation and hearing:
 1. In connection with the investigation of a charge filed under the Act, the Division or its duly authorized employees shall at all reasonable times have access to, for the purpose of examination, and have the right to copy any evidence of any person being investigated, provided such evidence relates to unlawful practices covered by the Act and is relevant to the charge under investigation.
 2. For the purpose of all hearings and investigations conducted by the Board or Division:
 - a. The Division, on its own initiative, or upon application of any party to the proceeding, may issue a subpoena compelling the attendance and testimony of witnesses or requiring the production for examination or copying of documents provided such evidence relates to unlawful practices covered by the Act and is relevant to the charge which is the subject matter of the hearing or investigation. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Division to revoke, limit or modify the subpoena. The Division shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to unlawful practices covered by the Act, is not relevant to the charge which is the subject matter of the hearing or investigation

does not describe with sufficient particularity the evidence whose production is required, or is unduly burdensome or oppressive. Any member of the Division, or any agent designated by the Division may administer oaths or affirmations, examine witnesses and receive such evidence.

- b. Any person appearing before the Division or Board shall have the right to be represented by counsel.
- c. The Superior Court, upon application by the Division or by the person subpoenaed, shall have jurisdiction to issue an order
 - i. Requiring such person to appear before the Division, the Board or the duly authorized agent of either, there to produce evidence relating to the matter under investigation if so ordered, or
 - ii. Revoking, limiting or modifying the subpoena or conditioning issuance of the subpoena upon payment of costs or expenses incurred to comply with the subpoena if in the court's opinion the evidence required does not relate to unlawful practices covered by the Act is not relevant to the charge which is the subject matter of the hearing or investigation, does not describe with sufficient particularity the evidence whose production is required or is unduly burdensome or oppressive.

Any failure to obey such order of the court may be punished by such court as a contempt.

- d. Where a subpoena is issued upon the motion of a party to the proceeding other than the Division, the cost of service, witness and mileage fees shall be borne by the party at whose request the subpoena is issued, unless otherwise ordered by the Division. Such witness and mileage fees shall be the same as are paid witnesses in the Superior Court of the state.
- H.** Taking of testimony -- mechanical recording: A taking of testimony pursuant to R10-3-306(G) may be recorded by other than stenographic means, including but not limited to tape recording.
- I.** Right to inspect or copy data: A person who submits data or evidence to the Division may retain or, on payment of lawfully prescribed costs, procure a copy or transcript if available, except that a witness may for good cause be limited to inspection of the official transcript of his testimony.
- J.** Authority to issue subpoenas: A subpoena issued pursuant to A.R.S. § 41-1403 shall be issued only by the Executive Director or an Assistant Attorney General designated by the Division.
- K.** Modification and or revocation of subpoena: When the party subpoenaed petitions the Division pursuant to A.R.S. § 41-1403(B)(1), for revocation and or modification of the subpoena, the decision to grant and or deny the petition shall be made by the Division Executive Director or an Assistant Attorney General assigned to the Division.
- L.** Dismissal of a charge: Upon completion of an investigation, if the Division determines that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the Charging Party and the Respondent, in writing, of such action. Notification to the Charging Party shall include
 - 1. A notice of right to request reconsideration of dismissal,
 - 2. A copy of the Division's finding of no reasonable cause, and
 - 3. Advice concerning his or her rights to proceed in court under the Act.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-307. Issuance of notice of hearing

If, upon investigation, the Division determines that there is reasonable cause to believe that the charge is true, it shall endeavor to eliminate such alleged discriminatory practice through means of conference, conciliation or persuasion. If the Division is unable to eliminate the discriminatory practice or act through conference, conciliation or persuasion, it shall issue and cause to be served upon the Respondent a copy of the charge filed with the Division, as the same may have been amended or supplemented, together with a notice of hearing before the Board or a subcommittee thereof. The notice shall specify the date, time and place of the hearing and in no event shall the date specified be less than 10 or more than 20 days from the date of issuance thereof. The charge and notice shall be served on the Respondent at least ten days before the date of the hearing. The notice shall advise the Respondent that he may file a written, verified answer to the charge.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-308. Hearings

All hearings before the Board involving discrimination in Voting and Public Accommodation shall be conducted pursuant to A.R.S. § 41-1009 et seq., except as may be modified by A.R.S. § 41-1471.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-309. Orders

- A.** The Board shall, within 30 days from the date the hearing is concluded, enter an order setting forth its finding of fact and serve a copy of such finding on all parties.
- B.** If the Respondent fails to correct a discriminatory practice or act found by the Board to exist, within 60 days of such finding, the Charging Party or the Division may file, within 30 days thereafter, a complaint in the Superior Court of the county where the discriminatory practice or act is alleged to have occurred.
- C.** If, upon all the evidence, the Division shall find that a Respondent has not engaged in an unlawful discriminatory practice or act, the Division shall state its finding of fact and shall enter and serve an order dismissing the charge and advising the Charging Party that he may within 30 days thereafter file a complaint in the Superior Court of the county where the alleged discriminatory practice or act occurred, as prescribed by the provisions of A.R.S. § 41-1471.
- D.** If the Board fails to enter an order setting forth its finding within 30 days from the date of the hearing, the Charging Party may, within 30 days thereafter, file a complaint in the Superior Court of the county where the alleged discriminatory practice or act is alleged to have occurred.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

R10-3-310. Record of hearings

The record of the hearings before the Division shall consist of the charge and any amendments or supplements thereto, written applications, motions, orders, transcript of the record on the hearing, exhibits, depositions, the final order, and any additional documents as the Division may direct.

Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).

ARTICLE 4. THE ARIZONANS WITH DISABILITIES ACT**R10-3-401. Definitions**

The following terms used in this Article or in the materials incorporated by reference in this Article have the following meaning:

1. "2010 Standards" means for:
 - a. Public entities, appendices B and D to 36 CFR 1191 (2009) and 28 CFR 35.151 (2011).
 - b. Places of public accommodation and commercial facilities, appendices B and D to 36 CFR 1191 (2009) and 28 CFR 36.401 through 36.406 (2011).
2. "Act" or "the Act" means the "Arizonans with Disabilities Act" or "AzDA," A.R.S. § 41-1492 et seq.
3. "Assistant Attorney General" means the "Arizona Assistant Attorney General."
4. "Attorney General" means the "Arizona Attorney General."
5. "National" means "State of Arizona."
6. "Respondent" means a person, public entity, commercial facility, or public accommodation against whom a complaint has been filed alleging a violation of the Arizonans with Disabilities Act.

Historical Note

Adopted effective September 3, 1996 (Supp. 96-3).
Amended by final rulemaking at 17 A.A.R. 2620, effective February 7, 2012 (Supp. 11-4).

R10-3-402. Nondiscrimination on the Basis of Disability by Specified Public Transportation

Private entities that are owners and operators of specified public transportation shall comply with the provisions of Appendices B and D to 36 CFR 1191 (2009), as modified by Appendix F to 36 CFR 1191 (2009), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Arizona Attorney General Civil Rights Division and the United States Department of Justice Civil Rights Division, Disability Rights Section - NYA, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530. Private entities that are owners and operators of specified public transportation also shall comply with the provisions of 49 CFR 37.5, 37.7(a), 37.9(a) through (c), 37.21(a)(2) through (3), 37.23(b) and (d), 37.25(a), 37.27 through 37.29, 37.37(a) through (f) and (h), 37.45, 37.49, 37.51(a) through (b), 37.55 through 37.57, 37.101 through 37.107, 37.161, 37.165 through 37.173, 37.187 through 37.189, 37.197, 37.201 through 37.211 and Appendix A to Part 37 (2010), and 49 CFR 38.1, the first sentence of 38.2, 38.4, 38.21 through 38.161, 38.171(a) through (b), 38.173 through 38.175, 38.179, and the Figures to Part 38 (2010), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Arizona Attorney General Civil Rights Division and the United States Department of Transportation, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.

Historical Note

Adopted effective September 3, 1996 (Supp. 96-3).
Amended by final rulemaking at 17 A.A.R. 2620, effective February 7, 2012 (Supp. 11-4).

R10-3-403. Nondiscrimination on the Basis of Disability by Public Entities

Public entities shall comply with the 2010 Standards and the provisions of 28 CFR 35.130(b)(4), 35.133, 35.135, 35.136, 35.137, 35.150, and 35.163 (2011), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Attorney General Civil Rights Division and the United States Department of Justice

Civil Rights Division, Disability Rights Section - NYA, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Historical Note

Adopted effective September 3, 1996 (Supp. 96-3).
Amended by final rulemaking at 17 A.A.R. 2620, effective February 7, 2012 (Supp. 11-4).

R10-3-404. Nondiscrimination on the Basis of Disability by Places of Public Accommodation and in Commercial Facilities

Places of public accommodations and commercial facilities shall comply with the 2010 Standards and the provisions of 28 CFR 36.101 through 36.104, 36.201 through 36.206, 36.208, 36.211, 36.301 through 36.311, and 36.507 (2011), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Attorney General Civil Rights Division and the United States Department of Justice Civil Rights Division, Disability Rights Section - NYA, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Historical Note

Adopted effective September 3, 1996 (Supp. 96-3).
Amended by final rulemaking at 17 A.A.R. 2620, effective February 7, 2012 (Supp. 11-4).

R10-3-405. Complaints

- A. Any person may file a complaint alleging discrimination on the basis of disability in accordance with the provisions of this Article. The complaint may be filed with the Attorney General no later than 180 days after an alleged discriminatory act or practice in violation of the Act or this Article. The complaint may be filed with the assistance of any person or organization authorized to act on behalf of the complaining person.
- B. A complaint may be filed against any person alleged to be engaged, to have engaged, or about to be engaged, in a discriminatory act or practice in violation of the Act or this Article.
- C. A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to the accessibility of any public building, public accommodation, commercial facility, or public transportation service, if that person, acting within the scope of their authority as an employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a violation of the Act or this Article.
- D. A person may file a complaint in person with, or by mail to: Attorney General, Civil Rights Division, 1275 West Washington, Phoenix, Arizona 85007; or Attorney General, Tucson Office, Civil Rights Division, 402 Congress West, Tucson, Arizona 85701; or such alternate or additional offices as the Attorney General may establish.
- E. A person may provide information stating a violation of the Arizonans with Disabilities Act by telephone to the Attorney General. The Attorney General shall reduce the information provided by telephone to writing on a complaint form and send the form to the complaining person to be signed and affirmed.
- F. Each complaint must be in writing and shall be signed and affirmed by the complaining person filing the complaint. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct".
- G. The Attorney General shall accept any written statement which substantially sets forth the allegations of a discriminatory act or practice under the Arizonans with Disabilities Act. Personnel in the Civil Rights Division shall provide appropriate assistance in filling out complaint forms and in filing a complaint.

- H.** Each complaint shall contain substantially the following information:
1. The name and address of the complaining person;
 2. The name and address of the respondent, if available;
 3. A description and the address of the public entity, commercial facility, public accommodation or specified public transportation which is involved, if available;
 4. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory act or practice.
- I.** A complaint is filed when it is received by the Attorney General's Office.
- J.** A complaint is timely filed if within the 180-day period for the filing of complaints, written information identifying the parties and describing generally the alleged discriminatory act or practice is filed as provided in R10-3-405(D) and (E).
- K.** Where a complaint alleges a discriminatory act or practice that is continuing, the complaint will be timely if filed within 180 days of the last alleged occurrence of that practice.
- L.** Failure to file an administrative complaint pursuant to this Section does not prevent an aggrieved person from bringing a civil action in Superior Court pursuant to A.R.S. § 41-1492.08.

Historical Note

Adopted effective September 3, 1996 (Supp. 96-3).

R10-3-406. Amendment of Complaints

- A.** Complaints may be amended at any time during the pendency of the investigation. Amendments may be used:
1. To cure technical defects or omissions, including failure to sign or affirm a complaint;
 2. To clarify or add to the allegations in a complaint; or
 3. To join additional or substitute respondents.
- B.** Except for the purposes of notifying respondents under R10-3-408, amended complaints shall relate back to the original filing date.

Historical Note

Adopted effective September 3, 1996 (Supp. 96-3).

R10-3-407. Notification of the Complaining Person

Upon the filing of a complaint, the Attorney General shall serve a notice upon each complaining person on whose behalf the complaint was filed. The notice shall:

1. Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;
2. Include a copy of the complaint;
3. Advise the complaining person of the time limits applicable to complaint processing and of the procedural rights and obligations of the complaining person under this Article;
4. Advise the complaining person of their right to commence a civil action under A.R.S. § 41-1492.08 in an appropriate court, not later than 2 years after the occurrence or termination of the alleged discriminatory act or practice or the breach of a conciliation agreement entered into under this Article; and
5. Advise the complaining person that retaliation against the complaining person or any other person because of the filing of a complaint or because the person testified, assisted, or participated in an investigation or conciliation under this Article, is a discriminatory act or practice that is prohibited by A.R.S. § 41-1492.10.

Historical Note

Adopted effective September 3, 1996 (Supp. 96-3).

R10-3-408. Notification of Respondent

- A.** Within 20 days of the filing of a complaint or the filing of an amended complaint, the Attorney General shall serve a notice on each respondent. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation as a person who is alleged to be engaged, to have engaged, or about to engage in the discriminatory act or practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person.
- B.** The notice shall:
1. Identify the alleged discriminatory act or practice upon which the complaint is based, and include a copy of the complaint;
 2. State the date that the complaint was accepted for filing;
 3. Advise the respondent of the time limits to file a response and of the procedural rights and obligations of the respondent;
 4. Advise the respondent of the complaining person's right to commence a civil action under the Act in an Arizona Superior Court at any time within 2 years after the occurrence or termination of the alleged discriminatory act or practice.
 5. If the person is not named in the complaint, but is being joined as an additional or substitute respondent, explain the basis for the Attorney General's belief that the joined person is properly joined as a respondent.
 6. Advise the respondent that retaliation against any person because the person made a complaint or testified, assisted, or participated in an investigation or conciliation under this Section, is a discriminatory act or practice that is prohibited under A.R.S. § 41-1492.10.

Historical Note

Adopted effective September 3, 1996 (Supp. 96-3).

R10-3-409. Answer to a Complaint

- A.** The respondent may file an answer not later than 10 days after receipt of the notice described in R10-3-408. The answer shall be signed and affirmed by the respondent. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct."
- B.** An answer may be amended at any time during the pendency of the investigation.

Historical Note

Adopted effective September 3, 1996 (Supp. 96-3).

R10-3-410. Investigations

- A.** Upon the filing of a complaint, the Attorney General shall initiate an investigation to:
1. Obtain information concerning the events or transactions that relate to the alleged discriminatory act or practice identified in the complaint.
 2. Document policies or practices of the respondent involved in the alleged discriminatory act or practice raised in the complaint.
 3. Develop factual data necessary for the Attorney General to make a determination whether reasonable cause exists to believe that a discriminatory act or practice has occurred or is about to occur, and to take other actions provided by A.R.S. § 41-1492.09.
- B.** Issuance of interrogatories. During the course of investigation, any member of the Attorney General's Office may cause to be issued interrogatories upon any party or witness to the proceedings.

1. Interrogatories issued pursuant to this provision shall require that the person addressed answer the interrogatories under oath.
 2. Interrogatories issued pursuant to this provision shall be answered and returned to the Attorney General's Office within 14 days of receipt of the interrogatories.
 3. Any person served with interrogatories issued pursuant to this provision may request of the Attorney General's Office a reasonable extension of time in which to answer the interrogatories. In computing any time period under this provision, the computation shall be governed by Rule 6A, Arizona Rules of Civil Procedure, A.R.S. Volume 16.
- C. Taking of Testimony -- Mechanical Recording. A taking of testimony pursuant to R10-3-405(F)(4) may be recorded by other than stenographic means, including, but not limited to, tape recording.

Historical Note

Adopted effective September 3, 1996 (Supp. 96-3).

R10-3-411. Reserved

R10-3-412. Conciliation

- A. In conciliating a complaint, the Attorney General shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violation of the rights of the aggrieved person, and take action that will assure the elimination of discriminatory acts or practices, or their prevention or recurrence.
- B. Where the rights of the complaining party and the respondent can be protected, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation.
- C. The terms of a conciliation agreement shall be in writing. The conciliation agreement shall seek to protect the interest of the complaining person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in A.R.S. § 41-1492.09(B). The provisions that may be sought for the vindication of the public interest are described in A.R.S. § 41-1492.09(C).
- D. A conciliation agreement shall be executed by the respondent, the complaining person, and the Attorney General. The Attorney General shall approve a conciliation agreement and shall execute the agreement, only if:
 1. The complaining person and the respondent agree to the relief accorded to the aggrieved person; and
 2. The provisions of the agreement will adequately vindicate the public interest.
- E. The Attorney General may file a civil action under A.R.S. § 41-1492.09 if the complaining person and the respondent have executed a conciliation agreement that has not been approved by the Attorney General.
- F. The following types of relief may be sought (without limitation) for complaining persons in conciliation:
 1. Monetary relief in the form of damages, including compensatory damages and attorney fees; and
 2. Equitable relief including but not limited to the provision of an auxiliary aid or service, modification of a policy, practice or procedure, and an order to alter facilities to make these facilities readily accessible to and usable by individuals with disabilities to the extent that alteration is required by A.R.S. § 41-1492.02.
- G. The provisions which may be sought for vindication of the public interest (without limitation) include:
 1. Elimination of discriminatory acts or practices, procedures, policies, and rules;
 2. Prevention of future discriminatory acts or practices;
 3. Remedial affirmative action activities to overcome discriminatory acts or practices;
 4. Reporting requirements;
 5. Monitoring and enforcement activities; and
 6. Civil penalties against the covered person or entity in an amount of not more than \$5,000.00 for a 1st violation and \$10,000.00 for any subsequent violation.
- H. The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in R10-3-412(G) and (H). The complaining person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.
- I. The Attorney General shall terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with the Attorney General, or if the Attorney General finds, for any reason, that voluntary agreement is not likely to result.
- J. Where the complaining person has commenced a civil action seeking relief from the alleged discriminatory act or practice, and the trial in the action has commenced, the Attorney General will terminate conciliation unless the court specifically directs the Attorney General to continue conciliation.
- K. Except as otherwise provided by the Act or this Section, nothing that is done in the course of conciliation under this Section shall be made public without the written consent of the persons concerned.
- L. The Attorney General has authority to review compliance with the terms of any conciliation agreement and shall file a civil action pursuant to A.R.S. § 41-1492.09, if there is reasonable cause to believe that a respondent has breached a conciliation agreement.

Historical Note

Adopted effective September 3, 1996 (Supp. 96-3).