

TITLE 10. LAW

CHAPTER 1. DEPARTMENT OF LAW
ATTORNEY GENERAL'S OFFICE

(Authority: A.R.S. § 41-192 and 41-771)

ARTICLE 1. DISMISSAL

Section

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ARTICLE 2. REPEALED

Article 2, consisting of Section R10-1-201, repealed effective November 2, 1995 (Supp. 95-4).

Section

- R10-1-201. Repealed

ARTICLE 1. DISMISSAL

R10-1-101. Definitions

In this Article, unless the context otherwise requires:

1. "Appellant" means any Assistant Attorney General who has filed an appeal from a dismissal by the Attorney General.
2. "Assistant Attorney General" means any attorney who has not been assigned permanent responsibility for directly supervising other attorneys.
3. "Personnel Review Committee" means a three-member committee which shall review an appeal by an Assistant Attorney General of his or her dismissal and render a decision on such appeal.
4. "Personnel Review Panel" means a panel of five members of the State Bar of Arizona appointed by the Attorney General not later than the 15th of January of each year from which the Personnel Review Committee is selected.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4).

R10-1-102. Application

- A. This Article shall apply to all Assistant Attorneys General hired or transferred into any vacant position by the Department of Law Attorney General on or after July 27, 1983, and to all Assistant Attorneys General employed before July 27, 1983, who have waived their rights under the State Merit System, but before October 1, 1984, and shall not apply to any Assistant Attorney General so hired or transferred after October 1, 1984.
- B. The Attorney General may, in his discretion, extend the application of this Article to any Assistant Attorney General hired or transferred into any vacant position on or after October 1, 1984, and who either has been employed by the Attorney General for more than five years or whose responsibilities, experience, and performance, in the opinion of the Attorney General, justify its application.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective Sept. 20, 1984 (Supp. 84-5).

R10-1-103. Probationary period for Assistant Attorneys General

All Assistant Attorneys General shall serve a probationary period of two years. An Assistant Attorney General may be dismissed by the Attorney General without cause and without the right to a hearing at any time during his or her two-year probationary period.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4).

R10-1-104. Dismissal of Assistant Attorneys General for cause

- A. After serving his or her two-year probationary period, an Assistant Attorney General may be dismissed only for cause.
- B. Cause for dismissal shall include the following:
 1. Fraud or misrepresentation in securing appointment.
 2. Incompetency -- meaning the lack of ability or fitness to discharge the required duties.
 3. Inefficiency -- meaning performance below the level of others performing like duties under similar conditions; or the incapacity or indisposition to perform one's duties.
 4. Neglect of duty.
 5. Insubordination -- meaning disrespectful or contumacious conduct toward a supervisor; or a knowing disregard of express or implied directions; or a refusal to obey a lawful and ethical order issued by a person authorized to issue such order.
 6. Dishonesty.
 7. Drunkenness on duty.
 8. Any unlawful use of narcotics or habit-forming drugs, or any use of or addiction to narcotics or habit-forming drugs which impairs job performance.
 9. Conviction of a felony, or conviction of a misdemeanor an element of which is intentional, knowing or reckless conduct. A plea or verdict of guilty to a charge of a felony, or any misdemeanor an element of which is intentional, knowing or reckless conduct is deemed to be a conviction for purposes of this Section.
 10. Discourteous treatment of the public or other public employees.
 11. Improper political activity.
 12. Misuse or unauthorized use of state property.
 13. Conduct either during or outside duty hours which is of such a nature that it causes discredit to the Attorney General's Office.
 14. Any conduct which is inconsistent, incompatible or in conflict with one's official duties as an Assistant Attorney General.
 15. Failure to discharge one's responsibilities as an Assistant Attorney General in a timely manner as directed by supervisors.
 16. Failure or refusal to comply with office policies established by the Attorney General.
 17. Use or attempted use of one's official position for private advantage.
 18. Any other action or pattern of activity that constitutes cause as a matter of law.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Editorial correction, subsection (B), paragraph (8) "lawful" should

read "unlawful" as filed for adoption effective July 27, 1983 (Supp. 85-1).

R10-1-105. Dismissal procedure of Assistant Attorneys General

The Attorney General may dismiss any Assistant Attorney General pursuant to A.A.C. R10-1-104, provided that:

1. On or before the effective date of any dismissal of an Assistant Attorney General, the attorney to be dismissed shall be provided with a written statement setting forth the basis for the dismissal in sufficient detail so as to inform him or her of the specific reason or reasons for such action.
2. In the event of an appeal by any Assistant Attorney General of a dismissal, the Attorney General shall provide a copy of the statement setting forth the basis for such dismissal and a copy of the written appeal by the Appellant to the Personnel Review Committee appointed to review such dismissal.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4).

R10-1-106. Hearing procedure

- A. An Assistant Attorney General dismissed pursuant to this Article may appeal such dismissal by filing a written appeal with the Attorney General no later than ten days after his or her notice of dismissal. The appeal shall state, in sufficient detail, specific responses to the cause or causes upon which the dismissal was based.
- B. The Attorney General may file a written response to the appeal, which shall be filed within ten days from the receipt of the appeal. A copy of the response shall be sent to the Appellant.
- C. Not later than the 15th of January of each year, the Attorney General shall appoint a Personnel Review Panel consisting of five lawyers who are members of the State Bar of Arizona. At least two members of the Panel shall have public law experience and at least one member shall have judicial experience. In the event of an appeal by an Assistant Attorney General of his or her dismissal, the Attorney General and the Appellant shall each be entitled to strike one member of the Personnel Review Panel. The three remaining members of the panel not stricken by either the Attorney General or the Appellant shall serve as the Personnel Review Committee for such appeal and shall render a decision as provided in this rule.
- D. The Personnel Review Committee shall conduct a hearing on the appeal within 30 days after the appeal is filed unless the time is extended by mutual consent of the Appellant and the Attorney General. The hearing shall be informally conducted with technical rules of evidence not applying to the proceeding. Both parties may present witnesses and may cross-examine any witnesses called by the other party. The Committee, in its discretion, may call additional witnesses. Both parties shall be given ten days advance notice of the hearing. Not less than five days prior to the hearing each party shall provide the Committee and the opposing party with a list of all witnesses to be presented. All testimony given before the Committee shall be recorded and transcribed by a court reporter and entered as a part of the official record.
- E. Either the Appellant or the Attorney General at his own expense may take the deposition of any witness who does not reside within the county or within 100 miles of the place where the hearing is to be held, is out of the state, or is too infirm to attend the hearing.
- F. The Personnel Review Committee shall render its decision within 20 days after the conclusion of the hearing and shall at the same time send a copy of its decision to the Attorney General and the Appellant. The Committee shall prepare an offi-

cial record of the hearing, including all testimony, all exhibits, and all other relevant documents.

- G. The Personnel Review Committee may, with the consent of both parties, waive the hearing and render its decision based solely upon the written evidence.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4).

R10-1-107. Rehearing

- A. Either party to an appeal by an Assistant Attorney General from his or her dismissal who is aggrieved by a decision rendered in such appeal may file with the Personnel Review Committee, not later than ten days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor.
- B. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Personnel Review Committee. A response may be filed within ten days after service of such motion or amended motion by any other party. The Personnel Review Committee may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C. A rehearing of the decision may be granted on any of the following grounds materially affecting the moving party's rights:
 1. Irregularity in the proceedings before the Personnel Review Committee or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 2. Misconduct of the Personnel Review Committee or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing;
 7. A decision not justified by the evidence or contrary to law.
- D. The Personnel Review Committee may affirm or modify the decision or grant a rehearing as to all or part of the issues for any of the reasons set forth in subsection (C). 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.
- E. The Personnel Review Committee, within the time for filing a motion for rehearing under this rule, may on its own initiative order a rehearing or review of its decision for any reason for which it 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 Personnel Review Committee may grant a motion for rehearing, timely served, for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the ground therefor.
- F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. The opposing party may within ten days after such service serve opposing affidavits.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4).

ARTICLE 2. REPEALED

R10-1-201. Repealed

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective May 19, 1988 (Supp. 88-2). Repealed effective November 2, 1995 (Supp. 95-2).