

Arizona Registrar of Contractors Substantive Policy Statement 2015.01: Filing Timely Answers under A.R.S. § 32-1155

Notice Required by Law

Section § 41-1091(B) of the Arizona Revised Statutes requires that the Registrar include on the first page of this Substantive Policy Statement the following notice:

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement.

Executive Summary

This Substantive Policy Statement contains the following key points:

1. Most of the citations issued by the Registrar are served by mail. *See* Intro. to Section I.
2. Service of a citation and complaint by mail is complete “five days after deposit in the mail.” *See* Section I.
3. If the Registrar issues a citation, then the licensed contractor must file a written answer. *See* Section II.
4. Failing to file a written answer on time has serious consequences: “Failure of the licensee to answer within ten days after service shall be deemed an admission by the licensee of the licensee’s commission of the act or acts charged in the complaint.” *See* Section II(A).
5. A phone call cannot count as a contractor’s answer; the answer must be in writing. *See* Section II(B).
6. From the date of service of the citation, the licensed contractor has only 10 calendar days to file a written answer. *See* Section III.
7. The written answer must be *filed with* — and not just *mailed to* — the Registrar within the 10-day statutory deadline. *See* Section III(A).
8. The Registrar lacks authority to extend the statutory 10-day deadline for filing a written answer. *See* Section III(C)(1)(a).
9. Depositing the written answer in the mail within the 10-day deadline does not, by itself, fulfill the 10-day deadline. *See* Section IV(B).
10. If a mailed answer is not received by the Registrar within the 10-day deadline, the answer must be considered late. *See* Section IV(B).

Introduction

Section 32-1155 of the Arizona Revised Statutes imposes the 10-day deadline for a licensed contractor to file a written answer to a citation and complaint. This Substantive Policy Statement informs the general public about the Registrar's understanding of a licensee's duty under A.R.S. § 32-1155 to file a timely written answer.¹

The Relevant Portions of A.R.S. § 32-1155

The sections of A.R.S. § 32-1155 dealing with a written answer and its due date are § 32-1155(A) and § 32-1155(B). Those subsections state:

- A. On the filing of a written complaint with the registrar charging a licensee with the commission, within two years before the date of filing the complaint, of an act that is cause for suspension or revocation of a license, the registrar after investigation, in its sole discretion, may issue a citation directing the licensee, within ten days after service of the citation on the licensee, to appear by filing with the registrar the licensee's written answer to the citation and complaint showing cause, if any, why the licensee's license should not be suspended or revoked. Service of citation on the licensee shall be fully effected by personal service or by mailing a true copy thereof, together with a true copy of the complaint, by registered mail in a sealed envelope with postage prepaid and addressed to the licensee at the licensee's latest address of record in the registrar's office. Service of the citation and complaint shall be complete at the time of personal service or five days after deposit in the mail. The two-year period prescribed by this subsection shall commence on the earlier of the close of escrow or actual occupancy for new home or other new building construction and otherwise shall commence on completion of the specific project.
- B. Failure of the licensee to answer within ten days after service shall be deemed an admission by the licensee of the licensee's commission of the act or acts charged in the complaint, and the registrar may then suspend or revoke the licensee's license.

¹ Under Arizona's Administrative Procedure Act, a "substantive policy statement" is defined as "a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion." A.R.S. § 41-1001(22).

The Registrar's Interpretation and Application of A.R.S. § 32-1155(A) and § 32-1155(B)

This Substantive Policy Statement covers (I) how the date of service is calculated when the Registrar serves a citation and complaint by mail; (II) the licensee's general duty to file a written answer to the citation and complaint; (III) specific issues that arise when determining the date on which the licensee's written answer is due; and (IV) the question whether mailing a written answer to the Registrar has the same legal effect as filing a written answer with the Registrar.

I. Service of the Citation and Complaint by Mail

Even though service of the citation and complaint may be "effected by personal service," Section 32-1155(A) also permits service to be effected "by registered mail." Because the majority of the Registrar's citations are served by mail, licensees should understand how to calculate the date of service after mailing.

A. The Basic Rule for Calculating the Date of Service after Mailing

Section 32-1155(A) states: "Service of the citation and complaint shall be complete . . . five days after deposit in the mail." For example: If the Registrar deposits a citation and complaint in the mail on June 1, the Registrar must consider the service of that citation and complaint to be complete on June 6.

Note: The date of service matters. It is used for calculating the due date for the licensee's written answer. Questions about the written answer's due date are discussed in Section III of this Substantive Policy Statement.

B. No Exception for Saturday, Sunday, or Holidays

The rule in Section 32-1155(A) is absolute: "Service of the citation and complaint shall be complete . . . five days after deposit in the mail." The statute makes no exceptions for Saturday, Sunday, or holidays.

This means that if the Registrar deposits a citation and complaint in the mail on June 1, the Registrar must consider service of that citation and complaint to be complete on June 6, even if June 6 happens to be a Saturday, Sunday, or holiday.

II. The Licensee's Statutory Duty to File a Written Answer

After a citation and complaint have been served, Section 32-1155 imposes a duty on the licensee to submit a written answer to the Registrar. In the sections below, the Substantive Policy Statement discusses: (A) the duty to answer considered generally and (B) the specific requirement for a "written" answer.

A. Appearing and Showing Cause by Written Answer

Once service of the citation and complaint has been completed, a licensee must file a written answer with the Registrar. A citation from the Registrar directs a licensee "to appear by filing with the registrar the licensee's written answer to the citation and complaint." A.R.S. § 32-1155(A).

No particular format for the answer is required. But the written answer's contents should "show[] cause, if any, why the licensee's license should not be suspended or revoked." A.R.S. § 32-1155(A).

If the licensee ignores or misunderstands the statutory duty to file a written answer, the licensee can suffer serious consequences. Arizona law states that the "[f]ailure of the licensee to answer within ten days after service shall be deemed an admission by the licensee of the licensee's commission of the act or acts charged in the complaint." A.R.S. § 32-1155(A).

B. The Licensee's Answer Must be in Writing

Under A.R.S. § 32-1155(A), a citation from the Registrar directs the licensee "to appear" and answer charges in the complaint. The statute specifically dictates the mode of the licensee's appearance and answer. The appearance and answer must be made by filing a "written answer to the citation and complaint." A.R.S. § 32-1155(A).

This means that a phone call from the licensee to the Registrar cannot satisfy the licensee's duty to appear and answer. A phone call from the licensee to the Registrar is not legally equivalent to "filing with the registrar the licensee's written answer." A.R.S. § 32-1155(A). So even if a licensee cannot file by the due date a written answer as thorough as the licensee wants to file, the licensee must nonetheless file some sort of written answer, whether by email, fax, or in-person drop-off.²

Note: If a licensee files a hasty and incomplete answer, the licensee is free to file a supplemental answer afterward. But the Registrar must consider the licensee's failure to file something in writing by the due date "an

² If the licensee chooses to submit the written answer by mail, the license runs the risk of the answer being received late, as explained in Section III(C)(1)(a) of this Substantive Policy Statement.

admission by the licensee of the licensee's commission of the act or acts charged in the complaint." A.R.S. § 32-1155(B).

III. Calculating the Written Answer's Due Date

In this section, the Substantive Policy Statement (A) discusses the general rule for determining a written answer's due date; (B) explains that the "days" in the rule are calendar days rather than business days; and (C) clarifies what happens when a written answer's due date falls on a holiday, a Sunday, or a Saturday.

One section of this Substantive Policy Statement — Section III(C)(1)(a) — addresses the issue of "extensions." That section explains why the Registrar lacks the authority to extend a written answer's due date.

A. The Basic Rule: The Licensee's Written Answer Must be Filed within Ten days after Service

Section 32-1155(A) states clearly that the licensee must appear by filing with the Registrar the licensee's written answer "*within ten days after service* of the citation on the licensee." (Emphasis added.) Section 32-1155(B) repeats the 10-day rule just as clearly: "Failure of the licensee to answer *within ten days after service* shall be deemed an admission by the licensee" (Emphasis added.)

Note: As discussed in Section III(C)(1)(a) of this Substantive Policy Statement, the 10-day deadline is not a matter for the Registrar's discretion. The 10-day deadline is imposed by A.R.S. § 32-1155.

B. The Ten days after Service are Calendar Days, not Business Days

The "days" in the phrase "ten days after service" in A.R.S. § 32-1155 are not specified as any particular kind of day. But in the interpretation of statutes, general terms are to be given their general meaning, and so the Registrar interprets those "ten days" as encompassing all the days of the week — i.e., as calendar days — and not as business days.

This means that if the Registrar deposits a citation and complaint in the mail on June 10, with service on the licensee being completed on June 15, then the licensee's written answer must be filed on June 25. That date is arrived at by simply counting the days:

- June 16 (the first day after service is completed),
- June 17 (the second day),
- June 18 (the third day),
- June 19 (the fourth day),
- June 20 (the fifth day),

- June 21 (the sixth day),
- June 22 (the seventh day),
- June 23 (the eighth day),
- June 24 (the ninth day), and
- June 25 (the tenth day after service is completed).

So in this example, June 25 is the last date on which the licensee could still file a written answer “within ten days after service.” A.R.S. § 32-1155(A). Anything received after that must be considered late.

C. When the Due Date Falls on a Holiday, a Sunday, or a Saturday

1. Answers Do Not Need to be Filed on a Holiday

What if the licensee’s due date happens to fall on a government holiday, such as the Fourth of July?

The holidays observed by the State of Arizona are enumerated in A.R.S. § 1-301(A), with one of those holidays being the Fourth of July. The Registrar does not require an answer to be filed on any of those holidays, because the Registrar operates in accordance with A.R.S. § 1-303, which states:

When anything of a secular nature . . . is provided . . . to be done upon a day named or within a time named, and the day or the last day thereof falls on a holiday, it may be performed on the next ensuing business day with effect as though performed on the appointed day.

This means that if a licensee’s written answer happens to be due on July 4, the licensee may file that written answer “on the next ensuing business day.” A.R.S. § 1-303. A written answer filed on that day will not be considered late.

a. Special Note: The Registrar Cannot Grant an Extension of a Written Answer’s Due Date

In the example above, neither the Registrar nor A.R.S. § 1-303 has *extended* the written answer’s due date to “the next ensuing business day.” The answer’s due date is still determined by the “ten days after service” in A.R.S. § 32-1155, and so the answer remains due on July 4 (the holiday used in the example). But because the written answer is filed on the next ensuing business day, the written answer is *deemed* to have been filed on the due date. That is, the written answer is treated “with effect as though performed on the appointed day.” A.R.S. § 1-303.

Setting and extending the deadline is not a matter of the Registrar’s discretion; the answer’s due date is fixed and imposed by A.R.S. § 32-1155. What looks like an extension

(i.e., treating the July 5 as satisfying the July 4 due date) is really the legal effect of another statute: A.R.S. § 1-303. It is *not* the effect of the Registrar's discretionary decision.

2. Answers Do Not Need to be Filed on a Sunday

Under A.R.S. § 1-301(A), the "Sunday of each week" is recognized as a "holiday." Any time a written answer's due date falls on a Sunday, the written answer may be filed on Monday, so long as that Monday is "the next ensuing business day." A.R.S. § 1-303.

3. A Holiday Observed on the Preceding Friday or Following Monday

Sometimes government holidays fall on a weekend. When that happens, Arizona statutory law generally provides that the holiday will be observed on the Friday before (if the actual holiday falls on a Saturday) or the Monday after (if the actual holiday falls on a Sunday). *See* A.R.S. § 1-301. In those cases, a licensee is not required to file an answer with the Registrar on that Friday or Monday "holiday." *See* Section III(C)(1) of this Substantive Policy Statement. The following examples illustrate this:

Preceding Friday: The written answer happens to be due on Friday, July 3, but the Registrar's office is closed that day in observance of July 4 on Saturday. The written answer may be filed "on the next ensuing business day," A.R.S. § 1-303, which will be Monday, July 6.

Following Monday: If July 4 happens to fall on Sunday, the Registrar's office will be closed on Monday, July 5, and any answers due on July 5 may therefore be filed on July 6.

4. Answers Do Not Need to be Filed on a Saturday

The Registrar treats Saturday as though it were a "holiday," because it routinely closes its offices on that day of the week. *See* A.R.S. § 1-302 (requiring the closure of public offices and courts of justice on legal holidays). If a written answer's due date happens to fall on a Saturday, the Registrar treats that due date as though it were governed by A.R.S. § 1-303, and the Registrar permits that written answer to be filed "on the next ensuing business day."

Note: Even though Saturday is not officially a government holiday, the Registrar's practice of treating Saturday as a "holiday" for a written answer's due date comports with A.R.S. § 1-303, and it respects the "ten days after service" granted to the licensee by A.R.S. § 32-1155 for preparing and filing a written answer.

IV. Mailing a Written Answer is Not Legally Equivalent to Filing It

In this section, the Substantive Policy Statement explains why the Registrar cannot treat *mailing* a written answer as legally equivalent to *filing* the written answer.

A. The Basic Rule: To be Timely, a Written Answer Must be Filed with the Registrar Within Ten Days after Service

Section 32-1155 states the specific mode by which a licensee must respond to a citation and complaint. The statute requires a licensee “to appear by filing with the registrar the licensee’s written answer to the citation and complaint,” that written answer must be filed “within ten days after service.” A.R.S. § 32-1155(A).

In the statute, therefore, the act of submitting a timely written answer has two essential components: (1) “filing [it] with the Registrar” (2) “within ten days after service.” A.R.S. § 32-1155(A). Under that statute, a licensee’s written answer cannot be considered timely if it is not on file with the Registrar within ten days after service.

Note: Often a licensee or the licensee’s attorney will mail the licensee’s written answer to the Registrar. By mailing the written answer, a licensee or attorney runs the risk of the written answer being untimely under A.R.S. § 32-1155. That risk is discussed below.

B. Mailing the Written Answer is not Legally Equivalent to Filing the Written Answer

Under A.R.S. § 32-1155(A), a licensee’s written answer is due “within ten days after service” and can be effective only “by filing with the registrar.” Whenever there is a question about whether a written answer was timely under the statute, the relevant date to consider is the date of “filing with the registrar.”

This means that, under A.R.S. § 32-1155(A), the licensee’s duty to provide a timely answer cannot be satisfied by simply depositing a written answer in the mail, even if that written answer is mailed on or before the due date. Mailing a written answer to the Registrar is one thing; “filing” that written answer “with the registrar” is another. A.R.S. § 32-1155(A).

Under A.R.S. § 32-1155(A), the date of mailing the written answer is irrelevant; it is only the date of “filing with the registrar” that matters when determining whether the answer is timely.

1. Examples: Mailing on June 10 is *Not* the Same as Filing on June 10

The Registrar’s conclusion — that mailing a written answer is not legally equivalent to filing that answer — can be illustrated with the following examples:

Timely Answer: A licensee’s written answer is due on a specific date: June 10. The licensee places that written answer in the mail on June 9, and the Registrar receives it on June 10. The licensee has accomplished an actual “filing with the registrar” by the due date.

Late Answer: But if the licensee places the written answer in the mail on June 10 — i.e., the same date it is due — then there will be no actual “filing with the registrar” by the due date (assuming there is no same-day delivery of the mail). The Registrar will not receive the written answer into its file until the next business day or even later.

As the last example shows, mailing the written answer on the due date has the same practical effect as personally hand delivering that answer *one day late*. The Registrar does not receive the licensee’s written answer until *after* that written answer’s due date.

2. Arguments: Distinguishing “Mailing” from “Filing” Accords with Plain Language and Sound Statutory Construction

The Registrar’s conclusion that A.R.S. § 32-1155(A) affords no legal effect to the mailing of a written answer fits with the ordinary meaning of the term “filing.” The term “file” usually signifies *actual deposit at the intended destination*. See Black’s Law Dictionary (10th ed. 2014) (defining *file*) (“To deliver a legal document to the court clerk or record custodian for placement into the official record . . .”).

The Registrar’s conclusion also respects an established canon of statutory construction: the expression of one thing implies the exclusion of others. Section 32-1155 imputes a legal effect to the Registrar’s mailing of the citation and complaint. A.R.S. § 32-1155(A) (“Service of the citation and complaint shall be complete . . . five days after deposit in the mail.”). But that same statute imputes no such legal effect to the licensee’s mailing of a written answer. By expressing the legal effect of one mailing (i.e., the Registrar’s mailing of the citation and complaint), Section 32-1155 excludes the legal effect of another mailing (i.e., the licensee’s mailing of the written answer).

Publication History

This section sets forth the publication history for *Arizona Registrar of Contractors Substantive Policy Statement 2015–01: Filing Timely Answers under A.R.S. § 32-1155*. That publication history is:

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