

## CONSTRUCTION

### SIGNIFICANT CHANGES MADE BY ROC TO ITS COMPLAINT AND HEARING PROCESS

by J. Gregory Cahill

For the last 25 years, the Arizona Registrar of Contractors' enforcement procedures have been best described as "complainant driven." That is, the ROC typically deferred to the claimant (usually a homeowner) as to whether a citation should be issued (even if the agency's own investigation found the complaint to be without merit) as well as whether to request a formal hearing. The ROC was less a regulator and more a referee between the complainant and the contractor.

Under the ROC's new procedures, instituted in late 2013, citations will not be issued solely at the request of the person filing the complaint. Rather, the ROC will first determine whether the evidence provided by the complainant and gathered by the ROC investigator supports a finding that there has likely been a substantial violation of law by the contractor. This procedure will place the ROC in line with other regulatory agencies both inside and outside Arizona. It will also likely result in fewer citations being issued. The intent of these changes is to allow the ROC to focus its regulatory efforts on "problem contractors" rather than on minor violations of law.

The ROC investigators are now charged with gathering all facts and making an initial determination as to whether the allegations in the complaint are substantiated. If the investigation reveals no substantial violations of law, the investigator will close the file with no further action. Notably, the complainant will have *no recourse* if the ROC determines that there has been no substantial violation of law.

If however, the investigator determines that there is a substantial violation of law, the ROC will have the option as to what type of discipline to pursue. Under its new graduated disciplinary scheme, if the ROC determines that there has likely been a substantial violation of law, it can choose to issue: (1) a Letter of Concern, (2) a Written Directive or (3) a Citation.<sup>1</sup>

A Letter of Concern is a written warning that advises the contractor of the ROC's concerns and that the case is closed. In its warning, the ROC can also inform the contractor that it reserves the right to reopen the matter or that it may use it as an aggravating factor in the event of future complaints. A Letter of Concern is not considered discipline and, therefore, the contractor has no right to seek a hearing on the appropriateness of its issuance.

A Written Directive is similar to the old "Corrective Work Order." In the directive, the ROC instructs the contractor to address or rectify a claimed deficiency. The matter remains open until the ROC determines that the contractor has complied with the directive. If the contractor complies, the case is closed. If not, the ROC may proceed to issue a citation.

A Citation involves a formal complaint by the ROC charging the contractor with a substantial violation of law and the matter is referred to an Administrative Hearing. The ROC is the named complainant and it has the burden to prove the alleged violation of law. Prosecution is performed by the Arizona Attorney General's office. In response, the contractor can choose to defend the claim or, alternatively, request a settlement conference to attempt to resolve the matter.

These changes make it even more imperative that a contractor provide the ROC with its position on the claim, preferably in writing. Contractors need to prepare to aggressively defend any claim at the outset.

<sup>1</sup> Of note, the ROC is also developing a fourth alternative: deferral to arbitration.

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