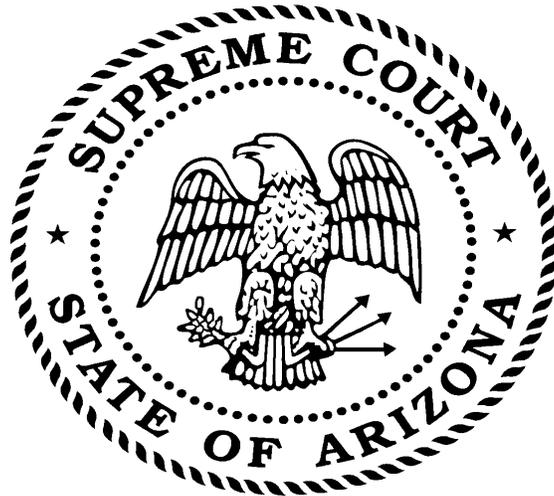


ARIZONA SUPREME COURT
Administrative Office of the Courts
Certification and Licensing Division



CONFIDENTIAL INTERMEDIARY

CANDIDATE STUDY GUIDE

Confidential Intermediary Program
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TABLE OF CONTENTS

1. INTRODUCTION	4
AUTHORITY	4
DEFINITION.....	4
REQUIREMENT FOR EXAMINATION.....	4
EXEMPTIONS FROM CERTIFICATION	4
PURPOSE OF THIS HANDBOOK	4
2. APPLICATION POLICIES AND PROCEDURES.....	5
ELIGIBILITY	5
CONFIRMATION OF ELIGIBILITY	5
FEES	5
SPECIAL ACCOMMODATIONS	5
3. OVERVIEW OF THE EXAMINATION	6
TIME LIMITS.....	6
FORMAT	6
PASSING SCORE	6
4. CONTENT SPECIFICATIONS.....	7
CONTENT AREAS.....	7
5. SAMPLE QUESTIONS	9
6. EXAMINATION POLICIES AND PROCEDURES.....	10
EXAMINATION SECURITY	10
ARRIVAL AT THE EXAMINATION.....	10
TARDINESS	10
REGISTRATION	11
NO SHOW POLICY	11
MATERIALS TO BRING	11
PROHIBITED MATERIALS	11
PERSONAL BELONGINGS	11
CHECK-OUT PROCEDURE	12
DISRUPTIVE BEHAVIOR	12
LEAVING THE ROOM DURING THE EXAMINATION	12

7. EXAMINATION RESULTS 13

 NOTIFICATION OF RESULTS 13

 RE-EXAMINATION 13

8. REFERENCES 14

9. APPLICABLE ACJA SECTIONS, RULES, ORDERS AND STATUTES 15

1. INTRODUCTION

AUTHORITY	Arizona Revised Statutes, Title 8, § 8-134 and Arizona Code of Judicial Administration (ACJA) § 7-201 and § 7-203 establish the authority for administration of the Confidential Intermediary Board by the Arizona Supreme Court. The Court administers the Confidential Intermediary Program through the Certification and Licensing Division of the Administrative Office of the Courts.
DEFINITION	ACJA § 7-202 defines confidential intermediaries as persons who complete the requirements for certification established by ACJA § 7-201, ACJA § 7-203, and ARS § 8-134 and possess a validation confidential intermediary certificate issued by the Arizona Supreme Court.
REQUIREMENT FOR EXAMINATION	<p>All candidates for certification as a confidential intermediary shall successfully pass a written examination.</p> <p>ACJA § 7-201 and § 7-203 do not provide for any waiver of the examination. All potential candidates for certification must take and pass the examination in order to be eligible to apply for certification.</p>
EXEMPTIONS FROM CERTIFICATION	ARS 8-134 does not require any agency licensed by the state or the Arizona Department of Economic Security to be certified as confidential intermediaries.
PURPOSE OF THIS HANDBOOK	The purpose of this handbook is to provide candidates with detailed information about the examination for certification as a confidential intermediary. The handbook includes information about subject matter areas assessed by the examination, candidate responsibilities on the day of the examination, and notification of examination results.

2. APPLICATION POLICIES AND PROCEDURES

ELIGIBILITY	<p>All potential candidates for certification must successfully complete the written knowledge examination, submit a completed application for certification, including the application fee, and possess the education or experience as outlined in ACJA § 7-201 and § 7-203.</p>
CONFIRMATION OF ELIGIBILITY	<p>Potential applicants for certification as a confidential intermediary must possess and demonstrate one or more of the qualifications to sit for the exam illustrated by ACJA § 7-203. ACJA § 7-203 and instructions for registering to participate in the examination are available for candidate review on the Program website at www.supreme.state.az.us/cip/.</p> <p>Available seats for the examination are filled on a first come first-come, first-serve basis. Examination staff reserves the right to limit the number of seats available at each administration. All candidates who fail to appear for a scheduled examination will be assessed a fee as prescribed by ACJA § 7-203.</p>
FEES	<p>The fee for participating in the examination is \$50.00. If it becomes necessary for an applicant to retake the examination, the fee is \$50.00. If a candidate registers for the exam and fails to appear as scheduled, the candidate will be assessed a \$50.00 re-registration fee.</p>
SPECIAL ACCOMMODATIONS	<p>Requests for special accommodations in accordance with the Americans with Disabilities Act of 1990 must be submitted to the Certification and Licensing Division with substantiating documentation.</p> <p>Requests must include a description of the nature of the disability and limitations related to the examination, the type of accommodation(s) requested and verification from a qualified professional. The qualified professional must have special expertise to evaluate the existence of the disability and proposed accommodations needed for the specific disability. Requests are reviewed and granted on an individual basis.</p>

3. OVERVIEW OF THE EXAMINATION

TIME LIMITS

Candidates are allowed a total of three (3) hours to complete the examination. Candidates may wish to complete the multiple-choice questions in any order; however, are responsible for managing their own time.

FORMAT

The examination consists of 100 multiple-choice questions worth one point each. There is one correct answer for each question. There is no penalty for guessing; therefore, candidates should answer all of the questions.

The multiple-choice questions cover subject matter areas related to the provision of services as a confidential intermediary (see Content Specifications, Section 4). The questions are designed to demonstrate candidates possess the basic knowledge, skills, and abilities to provide confidential intermediary services.

PASSING SCORE

The passing score is the score that a candidate must achieve in order to pass the examination and qualify for certification as a confidential intermediary in Arizona.

The passing score for the examination is a scaled score of 70 out of the possible 100 points. (**Please note:** the scaled score may be different from or higher than the raw score, which is the number of correct answers out of 100.) Scoring is not based on a candidate achieving a passing score in each of the content specification areas, but rather is reflective of the overall score on the examination.

4. CONTENT SPECIFICATIONS

CONTENT AREAS

The content for the examination was developed by a focus group of confidential intermediaries from representative practice settings in January 2007. They evaluated the importance of major subject matter areas of practice, determined their relative importance to practice, and assigned a weight (percentage) to each area.

For example, if the weight is 20%, there would be 20 questions on a 100-item examination. There are five content areas outlined in the content specifications:

- I. Statutes and code (20%)
 - a. ARS Section 8-134
 - b. ACJA Section 7-201
 - c. ACJA Section 7-203
 - d. ICWA
- II. Program procedures (15%)
 - a. Certification
 - b. Complaints
 - c. Renewal
 - d. Compliance
- III. Ethics (25%)
 - a. Standards of conduct
 - b. Confidentiality
 - c. Sensitivity and professionalism
 - d. Conflicts of interest
- IV. Case procedures (30%)
 - a. Search parties
 - b. Request for appointment
 - c. Consultation and mentoring
 - d. Fees and expenses
 - e. Record access, affidavits, and orders for release
 - f. File review statement
 - g. Information consents
 - h. Request for withdrawal and case reassignment
 - i. Finalization report
- V. Search process (10%)
 - a. Record searches
 - b. Public information
 - c. Communication and telephone call guidelines

The specified percentages of content area questions will be randomly ordered on the examination. For example, questions on program procedures will not be contained in one section or placed in consecutive order.

5. SAMPLE QUESTIONS

These specific questions will not be on the examination but are representative of the types and format of the questions on the examination.

1. Within how many days must an applicant retake the examination upon notice of the examination results?
 - A. 120 days
 - B. 90 days
 - C. 60 days
 - D. 30 days

2. Mary Smith, Harry Williams and John Jones are CIs who work in the same office. Mary and John plan to marry soon. Mary, who was adopted at birth, wants to locate her birth parents and invite them to her wedding. Who can conduct the search for Mary's birth parents?
 - A. Mary, as the adoptee
 - B. John, as a personal friend
 - C. Harry, as a business associate
 - D. Another CI

3. A CI attempts to contact a birth father but the birth father's wife demands to know why he is being contacted. What should the CI tell the wife?
 - A. "It is a personal matter."
 - B. "I need to speak with her about a court matter."
 - C. "I have information about a family member."
 - D. "I am doing an investigation."

Answers: B, D, A

6. EXAMINATION POLICIES AND PROCEDURES

EXAMINATION SECURITY

Candidates cannot receive any unauthorized assistance during the examination, including but not limited to any of the following:

- Impersonating another person in order to take the examination on that person's behalf;
- Communicating examination content to any person (during or after the examination);
- Removing examination materials from the examination room for the purpose of selling, distributing, buying, receiving, or having unauthorized possession of any portion of the examination;
- Having in one's possession books, equipment, notes, written or printed materials, data, other than the examination materials distributed;
- Reproducing examination materials or providing notes of examination content to any persons other than the examination staff; and,
- Obstructing or subverting the administration of the examination.

Any candidate who violates examination security policies is subject to denial of certification pursuant to ACJA §§ 7-201 and 7-202.

ARRIVAL AT THE EXAMINATION

On the day of the examination, the candidate must arrive at the designated examination site no later than the established registration time.

TARDINESS

An examination will not be disrupted to accommodate late arrivals. If a candidate reports late, the candidate will not be permitted to take the examination and will be required to pay prescribed fees for later participation.

REGISTRATION	<p>The candidate <u>must</u> report to the registration area and present photographic identification (e.g., state-issued driver's license, military-issued identification or government-issued passport). The candidate will not be permitted to take the examination if they have not pre-registered and/or if they do not have the required photographic identification.</p> <p>At the time of the examination, all candidates will be required to sign an acknowledgement of the examination security policies and a non-disclosure agreement.</p>
NO SHOW POLICY	<p>If a candidate fails to show up for the examination, the candidate must re-register for the examination and pay the applicable fees.</p>
MATERIALS TO BRING	<p>Other than photographic identification, the candidate will be provided with all material necessary to participate in the examination process.</p>
PROHIBITED MATERIALS	<p>Candidates cannot bring communication devices, reference materials, photographic equipment or electronic devices into the examination room. The following items are examples of prohibited materials:</p> <ul style="list-style-type: none"> • Cellular phones and pagers • Candidate handbooks, technical reference books and dictionaries • Cameras and videographic recorders • Radios and tape recorders • Laptop computers • Programmable electronic organizers, personal digital assistants (PDAs) • Drinks and food
PERSONAL BELONGINGS	<p>Candidates may keep keys, wallets and purses on the floor near their seat during the examination. Larger items (e.g., backpacks, briefcases, duffel bags, handbags, tote bags) and outerwear (e. g. coats, hats) CANNOT be brought into the examination.</p> <p>Examination staff will <u>not</u> be responsible for monitoring candidates' personal items during the examination. If a candidate reports with prohibited materials or belongings the candidate will be asked to make alternative arrangements before starting the examination.</p> <p>If securing belongings results in the candidate being late for the examination, the candidate will not be permitted to take the examination and will need to reschedule and submit any applicable fees.</p>

CHECK-OUT
PROCEDURE

All examination materials including test booklets, answer sheets, pencils and any notes taken during the examination must be returned to the examination staff. Failure to do so will void the candidate's examination.

DISRUPTIVE
BEHAVIOR

Candidates who engage in behavior that is disruptive to other candidates will be disqualified from the examination process.

Examples of disruptive behavior during the examination include:

- Eating and drinking during the examination;
- Allowing the alarm features of programmable wristwatches or other timepieces to emit sound; or
- Talking, whispering, or otherwise attempting to communicate with other candidates for any reason.

LEAVING THE ROOM
DURING THE
EXAMINATION

Candidates will not be permitted to leave the examination room for any purpose unless accompanied by a member of the examination staff. Candidates will NOT receive extra time to complete the examination. Failure to follow this rule will result in the candidate's examination being voided.

7. EXAMINATION RESULTS

NOTIFICATION OF RESULTS

Examination results will be sent to each candidate by mail at the address on file with the program within thirty (30) days of completion of the examination. Do NOT call the Certification and Licensing Division or make inquiries by email or in person requesting examination results. Examination results will NOT be released to third parties.

RE-EXAMINATION

A candidate who fails to pass the written examination may retake the examination two times under the following conditions:

- The candidate is not disqualified from retaking the examination for fraud, dishonesty, or corruption while taking the examination,
- The candidate sends a written request to retake the examination within 30 days of the date of receipt of the examination results,
- The candidate takes the reexamination within 90 days of the date of the notice of the examination results.

Pursuant to ACJA § 7-201, a candidate who has taken and failed the examination three times shall not be allowed to take a further examination unless the Confidential Intermediary Board grants special permission for the candidate to take another examination. The candidate must submit a written request stating the additional study and preparation the candidate has completed to qualify for an additional examination.

8. REFERENCES

The following list of references provides a complete and comprehensive list of the references related to the examination questions. There are no references listed that are not reflected in the questions which may be present on the examination. All cited references refer to the version of the reference as of January 2007. Any amendments adopted to the references after January 2007 will not be included in the examination. Every reference you will need to be familiar with for the purpose of the examination is contained in Section 9 of this study guide.

1. Arizona Code of Judicial Administration § 7-201 (D)
2. Arizona Code of Judicial Administration § 7-201 (E)
3. Arizona Code of Judicial Administration § 7-201 (F)
4. Arizona Code of Judicial Administration § 7-201 (G)(2)
5. Arizona Code of Judicial Administration § 7-201 (G)(4)
6. Arizona Code of Judicial Administration § 7-201 (H)
7. Arizona Code of Judicial Administration § 7-203(E)
8. Arizona Code of Judicial Administration § 7-203(F)
9. Arizona Code of Judicial Administration § 7-203(G)
10. Arizona Code of Judicial Administration § 7-203(J)
11. Arizona Code of Judicial Administration § 7-203 (L)
12. Arizona Code of Judicial Administration § 7-203 (M)
13. Arizona Revised Statute § 8-106(E)
14. Arizona Revised Statute § 8-121
15. Arizona Revised Statute § 8-134
16. United States Code, Title 25, Chapter 21, § 1901

9. APPLICABLE ACJA SECTIONS, RULES, ORDERS AND STATUTES

1. Arizona Code of Judicial Administration § 7-201 (D) – Administration

D. Administration.

1. Role and Responsibilities of the Supreme Court. Pursuant to A.R.S. § 8-134(I), § 14-5651(A), § 28-3395(B), § 32-4005(A) and Rule 31(a)(23), Rules of the Supreme Court, the supreme court is responsible for administering the confidential intermediary program, fiduciary program, defensive driving program, certified reporter program and legal document preparer program. The supreme court shall:
 - a. Adopt rules for the implementation and administration of all certification programs including minimum qualifications, certification and disciplinary processes and a code of conduct.
 - b. Establish and collect fees, costs and fines necessary for the implementation and enforcement of all certification programs.
2. Role and Responsibilities of the Director. The director as designated by the Az. Const. Art. 6 § 7:
 - a. Shall:
 - (1) Develop policies and procedures in conformity with this section and the applicable sections of ACJA including §§ 7-202, -203, -205, -206 and -208;
 - (2) Appoint and supervise all division staff;
 - (3) Approve or disapprove all budgetary matters;
 - (4) Ensure implementation of the applicable laws, this section and the applicable sections of the ACJA;
 - (5) Develop policies and procedures regarding review of credit reports;
 - (6) Develop policies and procedures governing any complaint initiated by the director; and
 - (7) Develop time frames for the processing of certification applications by division staff.
 - b. May:
 - (1) Appoint and develop administrative guidelines for ethics advisory committees to issue nonbinding ethical advisory opinions;
 - (2) Direct division staff to conduct an investigation into alleged acts of misconduct or violations by a certificate holder pursuant to subsection (H)(1)(b);

- (3) Initiate a complaint pursuant to subsection (H)(1)(b)(4)(b); and
- (4) Pursuant to the applicable sections of the ACJA, administrative orders and A.R.S. §§ 28-3399 and 41-2401(D)(8), initiate a compliance audit of a certificate holder to determine if the certificate holder is in compliance with statutes, court rules, administrative orders, court orders, local rules, the ACJA and any other legal or ethical requirement relating to the certificate holder's profession or occupation. The following provisions apply to audits:

- (a) Timeframes. The director shall develop timeframes and procedures for division staff conducting compliance audits.
- (b) Confidentiality.
 - (i) Working papers associated with the compliance audit maintained by division staff are not public records and are not subject to disclosure, except to court staff in connection with their official duties, the attorney general, county attorney, public regulatory entities or law enforcement agencies.
 - (ii) Upon completion of an audit the final report issued to the affected party is a public record subject to public inspection.
- (c) Subpoena. The director may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the audit.
- (d) Referral. The director may refer the audited certificate holder to an applicable agency or division staff for investigation of alleged acts of misconduct or violations of the statutes, court rules, this section or the applicable sections of the ACJA. If the director refers the audited certificate holder to division staff for investigation of allegations of acts of misconduct or violations, the division staff shall process the complaint pursuant to subsection (H).
- (e) Violations or Noncompliance. Willful violation of or willful noncompliance with an order of the director regarding the audit, or willful noncompliance with a corrective action plan resulting from an audit, may result in an order directing the certificate holder to comply. The director may forward a copy of the order or report to the superior court and request the superior court issue an order to require the appearance of a person or business, compliance with the director's order, or both. The superior court may treat the failure to obey the order as contempt of court and may impose penalties as though the certificate holder had disobeyed an order issued by the superior court.

3. Role and Responsibilities of the Deputy Director. The deputy director shall:

- a. Serve as the probable cause evaluator, pursuant to subsection (H)(5)(a);
- b. Review the investigation summary of a complaint prepared by division staff; and
- c. Determine if there is probable cause to believe a certificate holder has committed acts of misconduct or violations of the statutes, court rules, or the applicable sections of the ACJA.

4. Role and Responsibilities of Division Staff. The director shall designate the division director and other division staff to assist in the administration of all certification programs pursuant to the Az. Const. Art 6, § 7. Division staff shall administer all certification programs.

a. Role and Responsibilities of the Division Director. The division director may:

- (1) Issue subpoenas in the investigation process pursuant to subsection (H)(1)(h);
- (2) Dismiss complaints where the supreme court has no jurisdiction pursuant to subsection (H)(2)(b)(2);
- (3) Dismiss clearly insufficient complaints pursuant to subsection (H)(2)(b)(3); and
- (4) Refer complaints to another state agency or entity with jurisdiction, if appropriate, pursuant to subsection (H)(2)(b)(4).

b. Division staff shall:

- (1) Submit completed applicant fingerprint cards and applicable fees to the Arizona Department of Public Safety, in accordance with A.R.S. § 41-1750 and Public Law 92-544, pursuant to subsection (E)(1)(d)(3);
- (2) Make recommendations to the board on all matters of applications and certification and any other matters regarding applicants and certificate holders;
- (3) Provide updates to the board on program activities;
- (4) Maintain a list of certificate holders and post the list on the applicable Website and make the list available to the public;
- (5) Conduct investigations of allegations of acts of misconduct or violations of the statutes, court rules, or the applicable sections of the ACJA by applicants, certificate holders or non-certificate holders and report the findings to the board; and
- (6) Conduct compliance audits and monitoring as required by this section or the applicable sections of the ACJA.

5. Role and Responsibilities of Professional and Occupational Boards.

a. Establishment. The supreme court shall establish a board for each profession or occupation regulated by the supreme court pursuant to this section and the applicable ACJA section.

b. Appointment of members. Upon establishment of a board, the chief justice shall appoint members to initial varying terms of one, two and three years to encourage continuity of the board. Thereafter, all terms are for three years, unless otherwise noted in the applicable ACJA section. The chief justice shall appoint the chair of each board who shall serve as chair no longer than three years, unless otherwise specified in the applicable ACJA section. If a vacancy occurs in a board member position, the chief justice shall fill the vacancy expeditiously in the manner provided for in the original appointment. The appointments shall provide geographical, gender and ethnic diversity and consist

of members of the regulated profession or occupation, court staff, the public and other professionals pursuant to the applicable ACJA section. The chief justice may appoint members to serve successive terms. The members shall assist division staff in the recruitment of board members and in the recommendation to the chief justice regarding appointment of candidates to the board.

c. Duties of the Board.

(1) The board shall:

- (a) Make recommendations to the supreme court regarding rules, policies and procedures for regulation of the profession or occupation, including:
 - (i) applicant qualifications;
 - (ii) applicant testing;
 - (iii) fees;
 - (iv) a code of conduct;
 - (v) continuing education; and
 - (vi) any other matter pertaining to the regulated profession.
- (b) Establish a passing score on any examination used for certification purposes, other than a national validated examination;
- (c) Make all decisions regarding requests for special consideration to sit for subsequent examinations pursuant to subsection (E)(1)(f)(2)(d)(ii) and (iii);
- (d) Make all decisions regarding whether to certify applicants for initial or renewal of certification;
- (e) Review the division director's dismissal of a complaint, pursuant to subsection (H)(2)(d);
- (f) Review the probable cause evaluator's finding pursuant to subsection (H)(5)(a) and make a decision to:
 - (i) Request division staff to conduct further investigation;
 - (ii) Refer the complaint to another entity with jurisdiction;
 - (iii) Determine no violation exists and dismiss the complaint with or without prejudice, pursuant to subsection (H)(24)(a)(3);
 - (iv) Order the preparation of documents necessary for informal or formal disciplinary actions pursuant to subsection (H)(7)(b), (H)(8)(b) or (H)(9)(b); or
 - (v) Order an immediate emergency suspension of a certificate and set a date for an expedited hearing, if the public health, safety or welfare are at risk, pursuant to subsection (H)(9)(d)(1); and
- (g) Make all final decisions regarding alleged acts of misconduct or violations of the statutes, court rules, or applicable sections of the ACJA by applicants, certificate holders or noncertificate holders pursuant to subsections (H)(24) and (H)(25). The board has the final decision on the disposition of a complaint and may take any action pursuant to subsection (H)(24), regardless of the recommendations of the division director or hearing officer.

(2) The board may:

- (a) Hold informal interviews of applicants regarding initial certification and issue subpoenas for witnesses and documentary evidence, pursuant to subsection (E)(1)(a)(10);

- (b) Hold informal interviews of certificate holders regarding renewal of certification and issue subpoenas for witnesses and documentary evidence, pursuant to subsection (G)(1)(b);
 - (c) Request additional investigation of a complaint dismissed by the division director, pursuant to subsection (H)(2)(d)(2);
 - (d) Hold formal interviews of certificate holders regarding disciplinary matters, whether any discipline is eventually imposed or not, and issue subpoenas for witnesses and documentary evidence, pursuant to subsection (H)(8); and
 - (e) Make procedural determinations to consolidate or sever any discipline matter.
- d. The board shall follow the policies and procedures in subsection (I).
- e. Persons appointed by the supreme court to serve on boards are immune from civil liability for good faith conduct relating to their official duties.
6. Computation of Time. For the purposes of this section and the ACJA specific section, the computation of days pursuant to Rule 6(a), Rules of Civil Procedure is calculated as follows:

[T]he day of the act, event or default from which the designated period of time begins to run shall not be included . . . if less than 11 days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When that period of time is 11 days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

2. Arizona Code of Judicial Administration § 7-201 (E) – Initial Certification

E. Initial Certification.

1. Application for Initial Certification.
 - a. Forms. An applicant shall apply for certification on approved forms and file them with division staff.
 - (1) Division staff shall conduct a preliminary review of the submitted application and determine if the application is deficient, the required supporting documents are deficient, fees are deficient, or a combination of these requirements are deficient.
 - (2) Division staff shall advise the applicant in writing of the deficiencies.
 - (3) The applicant shall provide the information and a written response to correct or explain the deficiencies, or otherwise remedy the defects in the application, supporting documents or fees.
 - (4) Division staff may require the applicant to provide additional information or an explanation reasonably necessary to determine if the applicant meets the

required qualifications specified in this section or the applicable sections of the ACJA.

- (5) Upon receipt of a complete application, division staff may conduct a personal credit review and review records regarding an application for initial certification, consistent with the policies and procedures developed by the director pursuant to subsection (D)(2)(a)(5).
 - (6) The applicant shall notify division staff of any changes relevant to the application for certification within five days of the change.
 - (7) Upon a final review of the application, division staff shall prepare and forward to the board a written recommendation regarding the applicant's qualifications and eligibility for certification.
 - (8) Division staff shall advise the board in any written recommendation regarding certification of an applicant, of any complaints alleging acts of misconduct or violations of statute, court rules or order, this section, or the applicable sections of the ACJA, if the allegations occurred during the time the applicant held an active certificate and were received after the applicant's certificate expired.
 - (9) The division staff's written recommendation to the board shall note any deficiencies in the application. A deficient application for initial certification is lacking one or more of the following requirements:
 - (a) An explanation or correction of any deficiencies, pursuant to subsection (E)(1)(a)(4);
 - (b) Payment of all appropriate fees, pursuant to subsection (E)(1)(b);
 - (c) A photograph, pursuant to subsection (E)(1)(c); or
 - (d) A readable fingerprint card or affidavit in lieu of a fingerprint card, pursuant to subsection (E)(1)(d).
 - (10) The board, upon review of the division staff recommendation, may request an informal interview with an applicant for certification, pursuant to subsection (D)(5)(c)(2)(a), to establish if:
 - (a) Additional information is needed to determine if the applicant meets all qualifications for certification in this section and the applicable section of the ACJA;
 - (b) An explanation of the information provided by the applicant is needed to determine if the applicant meets all qualifications for certification in this section and the applicable section of the ACJA; or
 - (c) Any complaints, regarding allegations of misconduct or violations of the statutes, court rules or applicable sections of the ACJA, received after the applicant's original certificate expired, require investigation by division staff pursuant to subsection (E)(1)(a)(4).
- b. Fees. The applicant shall submit, with the application, any applicable certification, examination and training fees specified in the applicable sections of the ACJA. Fees are not refundable or waivable. An applicant shall make the payment for any fee payable to the Arizona Supreme Court. An application submitted without fees is deficient.
- c. Photograph. The applicant for certification shall provide with the application, one color passport-size photograph, two inches by two inches of the applicant's head, neck and shoulders only. The applicant shall ensure the

photograph was taken within the last two years and clearly identifies the applicant. An application submitted without a photograph is deficient.

- d. Fingerprinting. If required pursuant to law, the applicant shall submit with the application, a full set of fingerprints, with the fee established by law, for the purpose of obtaining a state and federal criminal records check. An application submitted without a fingerprint card, if required by law, is deficient.
 - (1) The applicant shall provide a readable and complete fingerprint card. The applicant shall pay any costs attributable to the original fingerprinting or subsequent re-fingerprinting due to unreadable fingerprints and any fees required for the submission or resubmission of fingerprints.
 - (2) If after two attempts, the FBI determines the fingerprints provided are not readable, the applicant shall submit a written statement, under oath, the applicant has not been arrested, charged, indicted, convicted of or pled guilty to any felony or misdemeanor, other than as disclosed on the application.
 - (3) Division staff shall submit completed applicant fingerprint cards and the applicable fees to the Arizona Department of Public Safety, pursuant to A.R.S. § 41-1750, Public Law 92-544 and subsection (D)(4)(b)(1).

- e. Initial Training. If required by the applicable section of the ACJA, an applicant shall attend and complete the initial training session. Division staff shall provide the applicant with a document signifying the applicant completed the training. If required by the applicable section of the ACJA, an applicant shall attend the entire training session for eligibility to sit for a certification examination.

- f. Examination. If required by the applicable section of the ACJA, an applicant shall take and pass the examination for initial certification. Specific examination requirements are located in subsection (E) of the applicable ACJA section. National examinations shall be at the time and place scheduled by the administering entity.
 - (1) Administration of the Initial Examination. In administering the examination, division staff shall:
 - (a) Offer the examination on dates in conjunction with the initial training for certification, if initial training is required by the applicable section of the ACJA;
 - (b) Set a date and place for the examination;
 - (c) Promptly notify qualified applicants in writing they are permitted to sit for the examination, specifying the time and place of such examination;
 - (d) Publish in advance of the examination, content specifications for the examination and a study guide, as approved by the applicable board and make the specifications and study guide available to applicants;
 - (e) Announce, in advance of the examination, the passing score for the examination, as established by the applicable board. The passing score shall be consistent with the job analysis conducted at the

- direction of the board. An applicant shall pass with a final score on the examination meeting the guidelines established by the board;
- (f) Use multiple versions of the examination and ensure no copies of the examination are released to applicants or the public;
 - (g) Inform each applicant in writing as to whether the applicant passed or failed the examination and if the grade is failing, a reexamination is required to meet all qualifications for certification; and
 - (h) Make and keep an accurate record of each examination used at each administration of the examination and the score of each person taking the examination.
- (2) Administration of Reexaminations. Division staff shall allow an applicant who fails the first examination to:
- (a) Review the answer sheet and grade of the applicant, upon written request. The applicant shall conduct the review during business hours in the presence of division staff and the applicant shall not copy materials provided for review.
 - (b) Retake the examination two times under the following conditions:
 - (i) The applicant is not otherwise disqualified from retaking the examination;
 - (ii) The applicant sent a written request to retake the examination to division staff within 30 days of the date of the notice of the examination results;
 - (iii) The applicant files a new application and pays the applicable examination fee each time;
 - (iv) The applicant takes the second or third reexamination within 90 days of the date of the notice of the examination results indicating the applicant failed either the first or second examination; and
 - (v) An applicant who does not submit a written request to retake the examination within the 30 day time frame specified in subsection (E)(1)(f)(2)(b)(ii), may request an extension of time from the board upon a showing of good cause.
 - (c) An applicant taking and failing the examination three times, unless otherwise noted in the applicable ACJA section, shall not be permitted to take any subsequent examination unless granted permission by the board.
 - (d) Subsequent Examinations.
 - (i) Any applicant who was unsuccessful on the third attempt to pass the examination may request the board for permission to sit for a fourth examination. The applicant shall submit a written request to the board to sit for a fourth examination under the following conditions:
 - a) The applicant has filed a new application with division staff and paid the appropriate examination fee;
 - b) The applicant is not otherwise disqualified from taking the subsequent examination;
 - c) The applicant has provided documentation attached to the new application stating the additional study and preparation the applicant has made to qualify for a fourth examination; and
 - d) The applicant has provided documentation attached to the new application demonstrating the circumstances and reasons for

believing the applicant now possesses the knowledge of the minimum competencies of the profession or occupation to pass the fourth examination.

- (ii) If the board finds the applicant demonstrates additional study and preparation and the circumstances and reasons to believe the applicant now possesses the knowledge of the minimum competencies of the profession or occupation, the board may, pursuant to subsection (D)(5)(c)(1)(c), approve the applicant's request to sit for the fourth examination. Division staff shall inform the applicant of the board's decision to allow the applicant to sit for the fourth examination within ten days of the board's decision. The notice shall state the earliest date for which the applicant may sit for the fourth examination.
 - (iii) If the board finds the applicant does not demonstrate additional study and preparation and the circumstances and reasons to believe the applicant now possesses the knowledge of the minimum competencies of the profession or occupation, the board shall, pursuant to subsection (D)(5)(c)(1)(c), deny the applicant's request to sit for the fourth examination. Division staff shall inform the applicant of the board's decision to deny the applicant's request to sit for the fourth examination within ten days of the board's decision. The notice shall state the reasons for the board's denial. The decision by the board to deny the request is final and there is no right to a hearing.
 - (iv) If the applicant's request to sit for the fourth examination is denied, the applicant may file a new application twelve months after the board's decision to deny.
 - (v) An applicant who was unsuccessful on the fourth or any subsequent examinations may request permission from the board to sit for a subsequent examination pursuant to subsection (E)(1)(f)(2)(d).
- g. An applicant is disqualified from taking any future examination if the board determines the applicant engaged in fraud, dishonesty or corruption while taking the examination or any subsequent examination.
- h. Updating of Examinations. Division staff shall update examinations as needed and may ask representatives from the court community, regulated profession or occupation, the public, or any other knowledgeable resource to assist in the development and validation of examinations for the applicable sections of the ACJA.

2. Decision Regarding Certification.

- a. Notification of Certification. Upon the board's decision to issue a certificate, division staff shall promptly notify qualified applicants of certification in writing, pursuant to this section and the applicable section of the ACJA. Each qualified applicant shall receive a document, badge or card evidencing certification, stating the applicant's name, date of certification, certificate number and expiration date of the certification. Each certificate shall expire

as provided in the applicable section of the ACJA. In addition, unless previously provided, each applicant granted certification shall receive a copy of this section and the applicable section of the ACJA, detailing the responsibilities of the certificate holder.

b. Certificate Status. All certificates are valid until expired, surrendered, suspended or revoked.

c. Denial of Initial Certification.

(1) The board shall deny certification of the applicant if the applicant does not meet the qualifications or eligibility requirements at the time of the application described in this section or the applicable section of the ACJA; or has not submitted a complete application with all deficiencies corrected, the applicable documents and fees.

(2) The board may deny certification of any applicant if one or more of the following is found:

(a) Material misrepresentation, omission, fraud, dishonesty, or corruption on the part of the applicant in the examination for certification;

(b) The applicant or an officer, director, partner, member, trustee, or manager of the applicant:

(i) Has committed material misrepresentation, omission, fraud, dishonesty, or corruption in the application form;

(ii) Has committed any act constituting material misrepresentation, omission, fraud, dishonesty or corruption in business or financial matters;

(iii) Has conduct showing the applicant or an officer, director, partner, member, trustee, or manager of the applicant is incompetent or a source of injury and loss to the public;

(iv) Has a conviction by final judgment of a felony, regardless of whether civil rights have been restored;

(v) Has a conviction by final judgment of a misdemeanor if the crime has a reasonable relationship to the practice of the certified profession or occupation, regardless of whether civil rights have been restored;

(vi) Has a denial, revocation, suspension or any disciplinary action of any professional or occupational license or certificate;

(vii) Has a censure, probation or any other disciplinary action of any professional or occupational license or certificate by other licensing or regulatory entities if the underlying conduct is relevant to the certification sought;

(viii) Has a termination, suspension, probation or any other disciplinary action regarding past employment if the underlying conduct is relevant to the certification sought;

(ix) Has been found civilly liable in an action involving misrepresentation, material omission, fraud, misappropriation, theft or conversion;

(x) Is currently on probation or parole;

(xi) Has violated any decision, order, or rule issued by a professional regulatory entity;

(xii) Has violated any order of a court, judicial officer, administrative

- tribunal, or the board;
- (xiii) Has made a false or misleading statement or verification in support of an application for a certificate filed by another person;
 - (xiv) Has made a false or misleading oral or written statement to division staff or the board;
 - (xv) Failed to disclose information on the certification application subsequently revealed through the background check;
 - (xvi) Failed to respond or furnish information to division staff or the board when the information is legally requested and is in the applicant's control or is reasonably available to the applicant and pertains to certification or investigative inquiries; or
 - (xvii) If the applicant is a business, a record of conduct constituting dishonesty or fraud on the part of an employee, board member, or the business.
- (3) The board may consider any or all of the following criteria when reviewing the application for certification of an applicant with a misdemeanor or felony conviction, pursuant to subsection (E)(2)(c)(2)(b)(iv) and (v):
- (a) The applicant's age at the time of the conviction;
 - (b) The applicant's experience and general level of sophistication at the time of the pertinent conduct and conviction;
 - (c) The degree of violence, injury or property damage and the cumulative effect of the conduct;
 - (d) The applicant's level of disregard of ethical or professional obligations;
 - (e) The reliability of the information regarding the conduct;
 - (f) If the offenses involved fraud, deceit or dishonesty on the part of the applicant resulting in harm to others;
 - (g) The recency of the conviction;
 - (h) Any evidence of rehabilitation or positive social contributions since the conviction occurred as offered by the applicant;
 - (i) The relationship of the conviction to the purpose of certification;
 - (j) The relationship of the conviction to the applicant's field of certification;
 - (k) The applicant's candor during the application process;
 - (l) The significance of any omissions or misrepresentation during the application process; and
 - (m) The applicant's overall qualifications for certification separate from the conviction.
- (4) Upon the board's decision to deny certification, division staff shall, notify each applicant denied certification of the reasons for the denial and the right of the applicant to a hearing, pursuant to subsection (E)(2)(c)(5). Division staff shall provide the notice in writing and shall send the notice within ten days after the board's decision.
- (5) An applicant is entitled to a hearing on the decision to deny certification, if the disciplinary clerk receives a written request for a hearing within fifteen days after division staff mails the notice of the denial. The applicant is the moving party at the hearing and has the burden of proof. The provisions of subsections (H)(12) through (H)(23) and (H)(25) through (H)(27) apply regarding procedures for the hearing and appeal.
- (6) An applicant denied certification by a final decision of the board, whether or not a hearing was requested and held, may reapply for certification, pursuant to subsection (E), under the following circumstances:

- (a) It has been twelve months since the final decision by the board;
- (b) If the initial reasons for denial were failure to meet the education and experience requirements, the applicant shall attach to the new application written documentation demonstrating how the circumstances have changed to meet these requirements:
 - (i) Division staff shall review the new application and supporting documentation and consider if the applicant now meets the education and experience requirements;
 - (ii) Division staff shall notify the applicant in writing within ten days if the applicant has now provided sufficient documentation to demonstrate the applicant meets the education and experience requirements pursuant to this section and the applicable ACJA sections or has not provided sufficient documentation to demonstrate the applicant now meets the education and experience requirements;
 - (iii) If the applicant has met the education and experience requirements necessary for certification, division staff shall forward the application to the board pursuant to subsection (E)(1)(a)(7);
 - (iv) If the applicant has not met the education and experience requirements necessary for certification, division staff shall forward the application to the board noting the deficiencies and a recommendation for denial pursuant to subsection (E)(1)(a)(9) and provide written notice to the applicant of the deficiencies and recommendation; and
 - (v) The applicant may request an informal interview with the board to review the recommendation of division staff for denial of certification because of the deficiencies, if the request is submitted to the board in writing within ten days of the date of the notification.
- (c) If the board denied certification for reasons other than failure to meet the education or experience requirements, the applicant shall present new documentation to address the original issues resulting in denial including all of the following:
 - (i) Demonstration of acceptance of responsibility for the conduct leading to the denial by the board; and
 - (ii) Establishment of good moral character.
- (d) In determining whether the applicant has established good moral character, the board shall conduct an informal interview with the applicant, no later than 60 days after the applicant has submitted a completed application.
- (e) Upon a showing of good cause, the applicant may apply for certification sooner than twelve months if denied solely for lack of education or experience necessary for certification, if those circumstances have changed.
- (f) The applicant may not reapply for certification if there are statutory provisions prohibiting certification as specified in the applicable ACJA section.

3. Time Frames for Certification.

- a. The director shall develop time frames for the processing of certification

applications by division staff, pursuant to subsection (D)(2)(a)(7).

- b. An applicant shall respond timely to requests for information from division staff pertaining to the applicant's application. Unless the applicant can show good cause as to why the board should grant additional time, the board shall not approve any applicant for certification unless the applicant successfully completes all requirements within 90 days from the date division staff received the original initial application for certification or within 90 days of the applicant passing the examination for certification if required by the applicable section of the ACJA.
 - c. If an applicant needs additional time to comply with division staff requests or to complete the application process within the time frames specified in this subsection, the applicant shall file a written request for an extension with division staff. The request shall state the reasons for additional time to comply with time frames and certification requirements. The applicant shall file the request for additional time to complete the initial application at a minimum, ten days prior to the 90 day deadline, unless the applicant makes a showing of good cause. Failure to complete the certification process or file a written request for an extension of time within this time period shall nullify and void the original application and supporting documents, including fingerprints, fees and the applicable examination scores.
 - d. Division staff shall forward the written request for an extension of time to the board at the next scheduled board meeting.
 - e. If the applicant fails to meet the 90 day deadline or is not granted additional time by the board to complete the initial certification process, the applicant is considered a new applicant. The applicant shall submit a new application including a fingerprint card and fee if applicable and certification and training fees. The applicant is not required to sit for the examination if the applicant submits the new application within one year of having successfully passed the required examination.
4. Records of Applicants for Certification and Certificate Holders. Unless otherwise provided by law, the following applies to applicant and certificate holder records:
- a. Applicant and certificate holder's certification records are open to the public, after home addresses, home or cellular telephone numbers, social security numbers and all other personally identifying information, except for the name of the certificate holder, have been redacted.
 - b. Division staff shall retain applicant and certificate holder records for a period of five years from the last activity in the record. Division staff shall take appropriate methods to ensure the confidentiality of any destroyed records.
 - c. If an applicant or certificate holder needs to have personally identifying information contained in their files released to an employer or potential employer, the applicant or certificate holder shall sign a release of information

form. Division staff shall provide the applicant or certificate holder with an approved form for this purpose.

5. **Unlawful Use of Designation or Abbreviation.** A person who has received a certificate to practice in a specific profession or occupation from the board is authorized to utilize the designation of “Arizona certified” in connection with their title or name and may use any appropriate abbreviation connected with this certification. No other person or business shall assume or use the title, designation or abbreviation or any other title, designation, sign or card, the use of which is reasonably likely to induce others to believe the person or business holds valid certification issued by the Arizona Supreme Court in the specified profession or occupation. The certificate holder shall not sell, transfer or assign its certification to any other entity.
6. **Cease and Desist Order.** The board, upon completion of an investigation or disciplinary proceeding, may issue a cease and desist order pursuant to subsection (H)(24)(a)(6)(g). A hearing officer or a superior court judge, upon petition by the board, may enter an order for an individual or business entity to immediately cease and desist conduct constituting engagement in the practice of the profession or occupation without the required certification.
7. **Voluntary Surrender.** A certificate holder in good standing may surrender their certificate to the board. However, the surrender of the certificate is not valid until accepted by the board. The board or division staff may require additional information reasonably necessary to determine if the certificate holder has violated any provision of the statutes, court rules and this section or the applicable section of the ACJA. The surrender does not prevent the commencement of subsequent discipline proceedings for any conduct of the surrendered certificate holder occurring prior to the surrender.
 - a. Division staff shall present the surrendered certificate to the board at the next available board meeting after receiving the surrender. Upon the board’s acceptance of the voluntary surrender division staff shall designate the certificate of the certificate holder as a “surrendered certificate holder in good standing”. Division staff shall notify the certificate holder in writing within ten days after the board’s acceptance of the surrender.
 - b. The board shall not accept the surrender if there is a complaint pending against the certificate holder. However, this does not preclude the board from entering into a consent agreement to resolve the pending complaint pursuant to subsection (H)(24)(a)(6)(c) by terms including the voluntary surrender of the certificate.
 - c. The board shall, within 120 days of the receipt of the surrendered certificate by division staff either accept the surrender or, based upon the recommendations of division staff, institute disciplinary proceedings pursuant to subsection (H). If the board subsequently imposes a sanction pursuant to subsections (H)(24) and (H)(25) upon the certificate of the surrendered certificate holder, division staff shall change the status of the certificate holder from “surrendered certificate holder in good standing” to that of a person so disciplined.

8. Inactive Status.

- a. A certificate holder may transfer to inactive status, upon written request to the board. Upon recommendation of division staff the board may accept the transfer of the certificate holder to inactive status and division staff shall note in the certification database the certificate holder is on inactive status, in good standing. The inactive certificate holder shall not engage in the practice of the profession or occupation of certification pro bono or for a fee or other compensation while on inactive status and shall not present themselves as a certificate holder.
- b. Upon application and payment of any applicable fee for reactivation of certification, required by the applicable section of the ACJA, the board may require the applicant to comply with the following:
 - (1) Submit proof of compliance with the requirements for continuing education;
 - (2) Submit other proof required by the board to:
 - (a) Demonstrate the applicant possesses the skills necessary to practice in the profession or occupation;
 - (b) Demonstrate the applicant remains in compliance with the applicable ACJA sections; and
 - (c) Demonstrate compliance with other requirements for certification.
 - (3) If the applicant for reinstatement engaged in the profession or occupation in another jurisdiction during the time the certificate holder's certificate was inactive, the applicant shall submit all of the following:
 - (a) Proof of practice in the profession or occupation in the other jurisdiction;
 - (b) An affidavit affirming the applicant has not been disciplined in another jurisdiction; and
 - (c) An affidavit affirming the applicant is not subject to discipline or being investigated in another jurisdiction.
 - (4) If the applicant has been inactive for more than one year the board may require the applicant to sit for and pass the applicable examination.
- c. If the applicant meets the requirements of this subsection to the satisfaction of the board, the board shall return the inactive certificate holder to active status. Division staff shall change the status of the certificate holder from "inactive" to "active" and notify the certificate holder of the board's decision within ten days.
- d. A certificate holder shall only remain in an inactive status as specified by the applicable ACJA section.

9. Reinstatement after Suspension or Revocation. A certificate holder whose certificate was suspended or revoked by a final order of the board may apply for reinstatement under the following conditions:

- a. An applicant for reinstatement shall file a written application for reinstatement with division staff, accompanied by the appropriate fees and the following documents:
- (1) The reinstatement form and a copy of the final order of suspension or revocation;
 - (2) A detailed description of the applicant's occupation and sources of income or earnings derived during the period between the filing of the final order by the disciplinary clerk and the date of application for reinstatement after suspension or an initial application for recertification;
 - (3) A statement of every civil or criminal action and a copy of the action, where the applicant was either plaintiff or defendant, since the submission of the last renewal application or, if no renewal application has been submitted, then since the initial application was submitted;
 - (4) A list of all criminal or civil final judgments since the submission of the last renewal application, or if no renewal application has been submitted, then since the initial application was submitted;
 - (5) A list of all residences and business addresses since the submission of the last renewal application, or if no renewal application has been submitted, then since the initial application for certification and the date division staff receive the application for reinstatement;
 - (6) A statement of concise facts of how the applicant for reinstatement has maintained the minimum competencies and knowledge during the period of time from the date of the suspension order until the date division staff receives the reinstatement application;
 - (7) A statement of concise facts of how the applicant for recertification has maintained the minimum competencies and knowledge during the period of time from the date of the order revoking the applicant's certificate until the date division staff receive the application for certification;
 - (8) A statement of facts supporting reinstatement to the profession or occupation after suspension; or a statement of facts supporting certification again to the profession or occupation; and
 - (9) A statement of all facts demonstrating the applicant's rehabilitation during the period of time from the date of the board's order revoking the applicant's certificate or suspending the applicant's certificate, until the date division staff receive the application for reinstatement or initial certification.
- b. Division staff or the board may require additional information demonstrating the applicant meets the minimum competencies of the profession or occupation. The board may require the applicant sit for and pass the applicable examination in order to process the application or determine if the applicant meets the minimum competencies of the profession or occupation. The applicant has the burden of proof to demonstrate by clear and convincing evidence the applicant's rehabilitation, compliance with all discipline orders and rules and, the applicant meets the minimum competencies of the profession or occupation. An applicant denied reinstatement by the board has the right to a hearing pursuant to subsection (H)(12), except if the applicant fails to provide the information within the requested time frame. Failure to provide the information shall result in automatic denial of reinstatement without the right to a hearing.

- c. Upon submission of all requirements of subsection (E)(9)(a), the applicant shall meet all requirements of initial certification pursuant to subsection (E)(1). The applicant, for reinstatement after a suspension or revocation, shall pay the fee for reinstatement, pursuant to subsection (K) in the applicable section of the ACJA.
- d. The board shall not issue any certification under this section to any person or business entity whose certification has been suspended until:
 - (1) The person or business entity seeking reinstatement of a suspended certificate has demonstrated all the requirements of the suspension order have been met; and
 - (2) The person or business entity qualifies in accordance with the applicable provisions of this section or other sections of the ACJA.
- e. The board shall not issue any certification under this section to any person or business entity whose certification has been revoked until:
 - (1) One year has passed from the date of the board's final order of revocation;
 - (2) The person or business entity seeking certification provides proof of satisfaction of any and all requirements in the order of revocation; and
 - (3) The person or business entity again qualifies in accordance with the provisions of subsection (E)(1) and the applicable sections of the ACJA.

3. Arizona Code of Judicial Administration § 7-201 (F) - Role and Responsibilities of Certificate Holders

F. Role and Responsibilities of Certificate Holders.

- 1. Code of Conduct. Each individual certificate holder shall adhere to the code of conduct or standards of conduct, subsection (J) in the applicable section of the ACJA.
- 2. Identification. Upon request by any judicial officer, court employee or member of the public, a certificate holder shall provide proof of certification.
- 3. Assumed Business Name. A certificate holder shall not transact business in this state under an assumed name or under any designation, name or style, corporate or otherwise, other than the legal name of the individual or business entity unless the person or business entity files with division staff a statement indicating the name for transaction of the business and the legal full name of the certificate holder.
- 4. Response. A certificate holder shall respond by the specific time stated in any request for information from, and shall provide documents to the director, deputy director, division staff, or board pertaining to certification, renewal of certification, complaints alleging acts of misconduct or violations by the certificate holder,

investigative inquiries and compliance audits or defensive driving course monitorings of the practice of the certificate holder. A certificate holder shall respond to any subpoenas or orders issued by the director, division director, board, or any judicial officer. Failure to comply with this subsection by a certificate holder constitutes grounds for discipline pursuant to subsection (H)(6)(c) or denial of renewal of certification pursuant to subsection (G)(3) and (G)(4). Failure to comply with this subsection by a certificate holder in completion of a corrective action plan or defensive driving course monitoring may constitute grounds for discipline, pursuant to subsection (H)(6)(b).

5. Candor.

a. A certificate holder shall not knowingly:

- (1) Make a false statement of material fact or law to a tribunal; or
- (2) Fail to disclose a material fact to a tribunal, except as required by applicable law.

b. A certificate holder shall notify division staff within ten days of a misdemeanor or felony conviction.

6. Change of Name or Address. A certificate holder shall notify division staff of any change in name or business, directory, mailing or home address, telephone number or email address within 30 days of any change, pursuant to the applicable sections of the ACJA. The certificate holder shall make this notice in writing by U.S. Post, facsimile or email.

4. Arizona Code of Judicial Administration § 7-201 (G)(2) – Renewal of Certification. Application

G. Renewal of Certification.

2. Application. A certificate holder is responsible for applying for a renewal certificate. The certificate holder shall apply for renewal of certification on the form provided by division staff. The board shall set a deadline renewal application date, in advance of the expiration date, to allow a reasonable time frame for processing the renewal application.

5. Arizona Code of Judicial Administration § 7-201 (G)(4) – Decision Regarding Renewal

4. Decision Regarding Renewal.

a. The board may renew a certification if the certificate holder:

- (1) Meets all requirements for renewal as specified in this section and the applicable section of the ACJA;
- (2) Submits a completed renewal application; and
- (3) Pays the renewal fees on or before the expiration date as specified by the

applicable section of the ACJA.

- b. Division staff shall promptly notify the applicant in writing of the board's decision to renew the applicant's certificate in accordance with this section and the applicable section of the ACJA. Each renewed applicant shall receive a document, badge or card evidencing renewal of certification, stating the applicant's name, date of certification, certification number and expiration date.
- c. The board may deny renewal of certification for any of the reasons stated in subsection (E)(2)(c). Division staff shall promptly notify the applicant, in writing, within ten days of the board's decision to deny renewal of certification. The notice shall include the board's reasons for the denial of renewal of certification and the right of the applicant to a hearing, pursuant to subsection (G)(4)(d).
- d. An applicant is entitled to a hearing, on the decision to deny renewal of certification if the disciplinary clerk receives a written request for a hearing within fifteen days after the date of the notice of denial. The applicant is the moving party at the hearing and has the burden of proof. The provisions of subsections (H)(12) through (H)(23) and (H)(25) through (H)(27) apply regarding procedures for hearing and appeal.

6. Arizona Code of Judicial Administration § 7-201 (H) - Complaints, Investigations, Disciplinary Actions, Proceedings and Certification and Disciplinary Hearings

H. Complaints, Investigations, Disciplinary Actions, Proceedings and Certification and Disciplinary Hearings.

1. Complaints. Filing and General Provisions.

- a. Filing of complaint. All judicial officers, court employees and certificate holders shall, and any person may, notify division staff if it appears a certificate holder has violated statutes, court rules, this section or the applicable section of the ACJA. The complainant shall provide the complaint in writing with sufficient specificity to warrant further investigation. The complaint form shall provide the name, telephone number and address of the complainant.
- b. Director initiated complaints. In accordance with the policies and procedures developed pursuant to subsections (D)(2)(a)(6) and (D)(2)(b)(2), the director may direct division staff to investigate allegations of acts of misconduct or violations of statutes, court rules, or the ACJA, which may result in a complaint, if such investigation protects and serves the best interest of the public. This shall include an investigation where the complainant does not wish to have their identity disclosed to the certificate holder.

- (1) Review of allegations. Division staff shall:
 - (a) Review the allegations and determine if the supreme court has jurisdiction;
 - (b) Determine if there is sufficient information to permit investigation;
 - (c) Verify details in the allegations including the certificate holder's status and, if available, any addresses, phone numbers or other relevant factors;
 - (d) Corroborate, by independent observations and information, the allegations of acts of misconduct or violations of statutes, court rules or the ACJA, to determine if the allegations are credible and reliable; and
 - (e) Meet with the division director to confirm jurisdiction and relevant factors contained in the allegations.
 - (2) Division staff shall, upon completion of the review, prepare a written report of the allegations and include the following:
 - (a) Confirmation of supreme court jurisdiction;
 - (b) Determination, if the allegations are true, they would warrant discipline;
 - (c) Verification of details in the allegations; and
 - (d) Corroboration of relevant facts by independent observations.
 - (3) Division staff shall forward the written report to the director for review and schedule a meeting with the director and division director.
 - (4) The director shall review the written report and direct staff to:
 - (a) Conduct further review of the allegations;
 - (b) Initiate a complaint naming the director as the complainant, pursuant to subsection (D)(2)(b)(3); or
 - (c) Determine the allegations do not warrant the filing of a director initiated complaint.
- c. Anonymous complaints. Division staff shall not accept anonymous complaints.
- d. Authority after expiration. If a complaint or investigation is pending prior to the expiration date of a certificate, the provisions of subsection (G)(1) and the applicable sections of the ACJA do not affect the authority of:
- (1) The director to initiate a complaint, pursuant to subsection (D)(2)(b)(3);
 - (2) Division staff to investigate a complaint, pursuant to subsection (D)(4)(b)(5); or
 - (3) The board to take disciplinary action regarding the certification of a certificate holder, pursuant to subsection (D)(5)(c)(1)(g).
- e. Standing of Complainant. A complainant does not have standing regarding any proceedings and is not a party to any proceedings. The complainant may, upon request to division staff, receive notice of any public proceeding concerning the complaint or any consent agreements. The complainant submits to the jurisdiction of the supreme court's certification and licensing division for all purposes relating to the proceedings.
- (1) The complainant shall keep division staff informed of any changes of mailing address, telephone number or email address during the investigation and any disciplinary proceedings.
 - (2) Division staff shall forward any correspondence or notice to the

complainant by United States mail to the last address of record with division staff.

- (3) Division staff shall provide the complainant with the following information:
 - (a) A written acknowledgement of the receipt of the complaint;
 - (b) A copy of the letter sent to the certificate holder requiring a response to the alleged acts of misconduct or violations and the initial response by the certificate holder, within twenty days of receipt of the certificate holder's initial response;
 - (c) Notice, if the complainant has requested notice of any public proceeding concerning the complaint or any consent agreement;
 - (d) Notice of the final disposition of each allegation; and
 - (e) Notice of the dismissal of the complaint within ten days of the determination by the division director, if applicable, pursuant to subsection (H)(2)(b).
 - (4) Failure by division staff to provide the complainant with information as required by this subsection shall not affect the ultimate disposition of any allegations of acts of misconduct or violations by the certificate holder.
 - (5) The complainant may file a request for review by the board of the division director's dismissal of the complaint, within ten days of the date of the notice of dismissal pursuant to subsection (H)(2)(e).
- f. Non-abatement. Unwillingness, failure of the complainant to cooperate with division staff or the board, withdrawal of the complaint or a specific allegation of misconduct or violation contained in the complaint, settlement or compromise between the complainant and the certificate holder, or restitution by the certificate holder shall not abate the processing of any complaint or disciplinary proceeding.
- g. Confidentiality of Complaints. The director, deputy director, division staff, board and court employees shall keep information or documents obtained or generated by the director, deputy director, division staff, board or court employees in the course of an open investigation or received in an initial report of misconduct confidential, except as mandated by court rules or this section.
- (1) Confidential information may also be disclosed during the course of an open investigation:
 - (a) To court staff, the attorney general, county attorney, law enforcement and other regulatory officials;
 - (b) If the director makes a finding the disclosure is in the best interest of the public and the interest is not outweighed by any other interests; or
 - (c) Is not contrary to law.
 - (2) Once a finding of probable cause has been entered all information and documents are open for public inspection unless:
 - (a) Confidential by law or public record rules adopted by the supreme court; or
 - (b) If the deputy director, as probable cause evaluator, determines further investigation is necessary, the information or documents and those compiled in the further investigation shall remain confidential until probable cause is determined.

- (3) Complaints dismissed by the division director, pursuant to subsection (H)(2)(b) for lack of jurisdiction or clear insufficiency are confidential and not a matter of public record for inspection.
 - (4) Complaints dismissed by the board, pursuant to subsection (H)(24)(a)(3) are a matter of public record for inspection.
- h. Investigative Subpoenas. Upon the recommendation of division staff and a demonstration of good cause, the division director, pursuant to subsection (D)(4)(a)(1), may issue an investigative subpoena to any person or entity:
- (1) For the purpose of securing documents or information from any person or entity, if the documents or information are related to a pending investigation of alleged acts of misconduct or violations regarding statutes, court rules, this section or the applicable section of the ACJA.
 - (2) Subpoenas issued by the division director shall be issued and served in the same manner as provided by the Arizona Rules of Civil Procedure. An employee of the court or any other person as designated by the Arizona Rules of Civil Procedure may serve the subpoena.
- i. Processing Time Frames. Division staff shall:
- (1) Prepare any complaint the division director has dismissed pursuant to subsections (H)(2)(b) and (c) and forward the complaint to the board for review, pursuant to subsection (H)(2)(d), at the next regularly scheduled board meeting.
 - (2) Prepare and forward to the board for review at the next regularly scheduled board meeting, any investigated complaint the deputy director has reviewed and entered a finding regarding probable cause, pursuant to subsection (H)(5)(c).
 - (3) Prepare the documents for informal discipline no later than 30 days following the order of the board, pursuant to subsections (H)(7)(b) and (H)(25), unless the board extends the time for good cause.
 - (4) Prepare the documents for formal discipline no later than 30 days following the order of the board pursuant to subsections (H)(9)(b) and (H)(25), unless the board extends the time for good cause.
 - (5) File the formal statement of charges with the disciplinary clerk and arrange for service no later than 30 days following the order of the board, pursuant to subsection (H)(10), unless the board extends the time for good cause.
 - (6) Serve the board's order of emergency summary suspension and expedited hearing immediately on the certificate holder, pursuant to subsection (H)(9)(d)(2).
 - (7) Except as provided in subsections (H)(1)(i)(6) and (8), deposit in the United States mail addressed to the last known address on file with division staff, written notice of the board's final decision and order, regarding a complaint matter, to the certificate holder and complainant within ten days after the board's decision, pursuant to subsection (H)(26)(b) and (c). Notice by mail is complete upon deposit in the United States mail.
 - (8) Mail the board's final order of suspension or revocation of the certificate,

pursuant to subsection (H)(26)(b) to the certificate holder, by certified mail return receipt requested, within two days, after the board's decision, addressed to the last known address on file with division staff; and

- (9) Process complaints timely, with the goal of processing 98 percent of all complaints within 22 months from date of receipt to final decision by the board.

2. Initial Screening of a Complaint. Upon receipt of a complaint:

a. Division staff shall:

(1) Consider if a complaint:

- (a) Falls outside the supreme court's jurisdiction;
- (b) Does not provide the name of a certificate holder;
- (c) Does not contain sufficient information to permit an investigation;
- (d) Does not provide specific allegations of acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA;
- (e) Contains allegations of acts of misconduct or violations, that if true, would not constitute a violation of the statutes, court rule, this section or the applicable section of the ACJA, the certificate holder is required to comply with;
- (f) Does not provide the name of the complainant; or
- (g) Does warrant further investigation and evaluation.

(2) Recommend the division director dismiss the complaint if the complaint:

- (a) Falls outside the jurisdiction of the supreme court, court rules, this section, the applicable section of the ACJA, or the laws applicable to the certificate holder;
- (b) Does not provide the name of a certificate holder;
- (c) Does not contain sufficient information to permit an investigation;
- (d) Does not provide specific allegations of acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA;
- (e) Contains allegations of acts of misconduct or violations that if true, would not constitute a violation of the statutes, court rules, this section or the applicable section the certificate holder is required to comply with; or
- (f) Does not provide the name of the complainant.

(3) Report all complaints dismissed by the division director to the board at the next regularly scheduled board meeting following the determination by the division director; and

(4) Provide written notice to the complainant and the certificate holder of the division director's decision to dismiss the complaint for the reasons in subsection (H)(2)(b) and (c), within ten days of the division director's decision.

b. The division director may:

- (1) Direct division staff to return an incomplete complaint to the complainant for additional information;

- (2) Dismiss a complaint, pursuant to subsection (D)(4)(a)(2), with or without prejudice, if the complaint falls outside the jurisdiction of the supreme court, the statutes, court rules, this section or the applicable section of the ACJA;
 - (3) Dismiss a complaint, pursuant to subsection (D)(4)(a)(3), with or without prejudice, if the complaint meets any of the criteria of subsection (H)(2)(a)(2)(b) through (f); or
 - (4) Refer the complaint to another state agency or entity with jurisdiction, if appropriate, pursuant to subsection (D)(4)(a)(4).
 - c. The division director shall dismiss the complaint, if the complainant does not supply documents or other information to remedy an insufficient complaint or demonstrate the alleged acts of misconduct or violations are within the certificate holder's responsibilities as required by statutes, court rules, this section or the applicable section of ACJA.
 - d. The board shall review, pursuant to subsection (D)(5)(c)(1)(e), the division director's dismissal of a complaint and do one of the following:
 - (1) Affirm the division director's dismissal; or
 - (2) Request additional investigation of the dismissed complaint; pursuant to subsection (D)(5)(c)(2)(c).
 - e. The complainant may request the board review the division director's dismissal of the complaint pursuant to subsection (H)(2)(b) or (c) by submitting a written request for review, specifying the requested reasons for the board's review. The complainant shall submit the request for review to division staff within ten days of the written notice of the division director's dismissal of the complaint.
3. Investigation. Division staff shall investigate the complaint, after completion of the initial screening of the complaint and the determination a complaint is within the jurisdiction of the supreme court and warrants further investigation pursuant to subsection (H)(2)(a)(1)(g).
 - a. Preliminary Investigation. Division staff shall conduct an investigation of all complaints not dismissed by the division director to determine if a certificate holder has violated statutes, court rules, this section, or the applicable section of the ACJA; or for the purpose of securing information useful in the lawful administration of the law, this section, or the applicable sections of the ACJA.
 - b. Notification to Certificate Holder of Complaint. Division staff shall send the complaint to the certificate holder within fifteen days of receiving the complaint or the date the director initiates a complaint pursuant to subsections (D)(2)(b)(3) and (H)(1)(b)(4)(b).
 - c. Certificate Holder's Response to Notification of Complaint. The certificate holder shall provide a written response to the complaint within thirty days of the notification of the complaint. The board shall not proceed with disciplinary action without providing the certificate holder the complaint and an opportunity to respond to the complaint, except in a matter regarding an

emergency suspension pursuant to subsection (H)(9)(d). Failure by the certificate holder to accept notification of a complaint or failure to respond to the complaint shall not prevent division staff from proceeding with an investigation and the board from taking any disciplinary action.

- (1) If the certificate holder is unable to respond to a complaint within the time frame established by subsection (H)(3)(c), the certificate holder may submit a written request to the division director for an extension of time to respond. The request for an extension of time to respond shall demonstrate good cause exists for an extension and shall provide a proposed date for fulfillment of the response requirement. The certificate holder shall file the written request for an extension of time to respond to the complaint, no later than five days prior to the date the response is due.
 - (2) The division director shall determine if good cause exists for an extension. Division staff shall notify the certificate holder of the division director's decision on the request for an extension of time for providing a written response, within five days of the request for extension from the certificate holder.
4. Preparation of Investigation Summary. Upon completion of the investigation, division staff shall prepare a written investigation summary for review by the probable cause evaluator. The investigation summary shall include an analysis of the allegations of misconduct and violations and a recommendation as to whether probable cause exists demonstrating the certificate holder committed any of the alleged acts of misconduct or violations.
 5. Probable Cause Review. Pursuant to subsection (H)(4) division staff shall forward the investigation summary to the probable cause evaluator for review and determination as to whether probable cause exists misconduct or violations occurred and are demonstrated in the investigation summary.
 - a. The deputy director, serving in the capacity of probable cause evaluator pursuant to subsection (D)(3)(a), shall review the written investigation summary of the allegations of acts of misconduct or violations. The deputy director may agree or disagree with the recommendations contained in the summary and may do one or more of the following:
 - (1) Direct division staff to investigate further;
 - (2) Determine probable cause does not exist demonstrating the certificate holder has committed any acts of misconduct or violations of the statutes, court rules, this section, or the applicable section of the ACJA and enter a written finding to that effect; or
 - (3) Determine probable cause exists demonstrating the certificate holder has committed one or more acts of misconduct or violations of the statutes, court rules, this section, or the applicable section of the ACJA and enter a written finding to that effect.
 - b. If the probable cause evaluator directs division staff to investigate the complaint further, pursuant to subsection (H)(5)(a)(1), division staff shall do so immediately.

c. Upon review of the finding by the probable cause evaluator, pursuant to subsection (H)(5)(a)(2) and (3), division staff shall forward to the board, pursuant to subsection (H)(1)(i)(2), the investigation summary, finding by the probable cause evaluator and a written recommendation by the division director for the appropriate disposition of the complaint. The written recommendation by the division director shall include any sanctions if applicable, pursuant to subsections (H)(7), (H)(9), (H)(24)(a)(6) and (H)(24)(b). The board shall review these documents at the next regularly scheduled board meeting and do one of the following:

- (1) Determine the certificate holder did not commit any acts of misconduct or violations and dismiss the complaint pursuant to subsections (D)(5)(c)(1)(g) and (H)(24)(a)(3);
- (2) Determine the allegations of acts of misconduct or violations do not warrant discipline pursuant to subsection (D)(5)(c)(1)(g), but the certificate holder's actions need modification or elimination and send an advisory letter to the certificate holder pursuant to subsections (H)(24)(a)(4) and (H)(24)(b)(1);
- (3) Determine the allegations of acts of misconduct or violations may be resolved through informal discipline proceedings pursuant to subsection (H)(7);
- (4) Determine the acts of misconduct or violations may be resolved through a formal interview, pursuant to subsection (H)(8);
- (5) Determine the acts of misconduct or violations may be resolved through a formal discipline proceeding, pursuant to subsection (H)(9); or
- (6) Determine the acts of misconduct or violations pose harm or a risk to the public health, safety or welfare and require resolution through an emergency summary suspension, pursuant to subsection (H)(9)(d). An emergency summary suspension is a formal discipline proceeding.

6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one of more of the following:

- a. Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;
- b. Failed to comply with or complete a corrective action plan resulting from an audit or course monitoring;
- c. Failed to cooperate with or supply information to the director, deputy director, division staff or board by the specific time stated in any request;
- d. Aided or assisted another person or business entity to provide services requiring certification if the other person or entity does not hold the required certification;
- e. Conviction of a criminal offense while certified by final judgment of a felony relevant to certification;

- f. Failed to provide information regarding a criminal conviction;
- g. Exhibited gross negligence;
- h. Exhibited incompetence in the performance of duties;
- i. Evaded service of a subpoena or notice of the director, division director or board;
- j. The existence of any cause for which original certification or renewal of certification could have been denied pursuant to subsections (E)(2)(c) or (G)(4)(c) and the applicable section of the ACJA;
- k. Engaged in unprofessional conduct, including:
 - (1) Assisted an applicant or certificate holder in the use of deception, dishonesty or fraud to secure an initial certificate or renewal of a certificate;
 - (2) Failed to comply with any court order, board order or other regulatory agency order relevant to the profession or occupation;
 - (3) Failed to comply with any federal, state or local law or rule governing the practice of the profession or occupation;
 - (4) Failed to comply with any terms of a consent agreement, restriction of a certificate or corrective action plan;
 - (5) Failed to retain client or customer records for a period of three years unless law or rule allows for a different retention period;
 - (6) Failed to practice competently by use of unsafe or unacceptable practices;
 - (7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent professional certificate holder engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer;
 - (8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice;
 - (9) Used advertising intended to or having a tendency to deceive the public;
 - (10) Used a supreme court certification to deceive the public in level of skills or abilities;
 - (11) Willfully made or filed false reports or records in the practice of the profession or occupation;
 - (12) Failed to file required reports, records or pleadings in the practice of the profession or occupation;
 - (13) Delegated professional or occupational responsibilities or duties to an employee or person who the certificate holder knows does not possess the necessary level of education, experience, skills or credentials to perform the duties of the profession or occupation unless authorized to do so by the applicable section of the ACJA;

- (14) Performed the responsibilities or duties of the profession or occupation when medically or psychologically unfit to do so;
- (15) Engaged in habitual substance abuse;
- (16) Engaged in undue influence over a client or customer to the benefit, financial or otherwise, of the certificate holder or a third party; or
- (17) Violated any statutory, court rule, or the applicable ACJA section regarding a confidentiality requirement.

7. Informal Disciplinary Proceedings.

a. Commencement. Following entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsections (H)(5)(a) and (c), the board may commence informal disciplinary proceedings if the board finds the complaint is appropriate for resolution through informal disciplinary proceedings.

b. Decision of the Board. The board may resolve the complaint through informal disciplinary proceedings and impose an informal sanction pursuant to subsection (H)(24)(a)(6)(a) or may take other action pursuant to this section. The board, pursuant to subsection (D)(5)(c)(1)(f)(iv), shall order the preparation of documents necessary to commence informal disciplinary proceedings. The board may make procedural determinations to consolidate or sever any informal discipline matter pursuant to subsection (D)(5)(c)(2)(e). The provisions of subsections (H)(24) and (H)(25) apply to the decision and order of the board. Informal disciplinary proceedings:

- (1) Do not provide the certificate holder the right to a hearing;
- (2) May result in the informal sanction of a letter of concern;
- (3) Are not subject to special action proceedings pursuant to subsection (H)(27); and
- (4) Are not confidential.

8. Request for Formal Interview. Upon entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsections (H)(5)(a) and (c), and a board determination formal discipline is warranted, but before the filing of the formal statement of charges, the board may request a formal interview with a certificate holder, pursuant to subsection (D)(5)(c)(2)(d). The request for a formal interview is to determine if the facts of the complaint may be capable of resolution outside of a formal disciplinary process by consent agreement or other negotiated settlement, pursuant to subsection (H)(24)(a)(6)(c) between the board and certificate holder. The board shall hold the formal interview at the next regularly scheduled board meeting, unless the board determines good cause to expedite the interview.

a. Once the board determines a formal interview is necessary, division staff shall provide the certificate holder a copy of the investigation summary, finding by the probable cause evaluator and the written recommendation by the division director for the appropriate disposition of the complaint. Division staff shall also provide written notice of the day and time of the scheduled interview. If the certificate holder declines the board's request for an

interview, the certificate holder does not forfeit the right to request a hearing pursuant to subsection (H)(12).

- b. If the certificate holder declines the board's request for a formal interview, or if the division director's recommended sanctions for future found violations include a suspension of more than twelve months or revocation, the board shall order the preparation of documents necessary for a filing of a formal statement of charges pursuant to subsections (D)(5)(c)(1)(f)(iv) and (H)(9)(b). The board may consolidate or sever any discipline matter pursuant to subsection (D)(5)(c)(2)(e).
- c. Upon the completion of the formal interview, if the board enters a finding the evidence obtained during the investigation or provided by the certificate holder merits a suspension of more than twelve months or revocation of the certificate, the board shall order the preparation of documents for filing a formal statement of charges, pursuant to subsections D(5)(c)(1)(f)(iv) and H(9)(b).
- d. Upon the completion of the formal interview, if the board enters a finding the evidence obtained during the investigation or provided by the certificate holder demonstrates the public's health, safety, or welfare requires emergency action, the board shall issue an emergency summary suspension order pursuant to subsections (D)(5)(c)(1)(f)(v) and H(9)(d).
- e. Upon completion of the formal interview, if the board determines the evidence obtained during the investigation or provided by the certificate holder does not merit a suspension of more than twelve months, revocation, or an emergency summary suspension, the board may take one or more of the following actions:
 - (1) Determine the certificate holder did not commit any acts of misconduct or violations of statutes, court rules, this section, or the applicable section of the ACJA and dismiss the complaint pursuant to subsections (D)(5)(c)(1)(g) and (H)(24)(a)(3);
 - (2) Determine the allegations of acts of misconduct or violations of statutes, court rules, this section, or the applicable section of the ACJA, do not warrant discipline, but the certificate holder's actions need modification or elimination and send an advisory letter to the certificate holder, pursuant to subsections (D)(5)(c)(1)(g), (H)(24)(a)(4) and (H)(24)(b)(1);
 - (3) Determine the certificate holder committed one or more acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA, and the complaint is appropriate for resolution through informal discipline proceedings pursuant to subsections (D)(5)(c)(1)(g) and (H)(7);
 - (4) Determine the certificate holder committed one or more acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA, and the complaint is appropriate for resolution through a consent agreement as part of formal disciplinary proceedings, pursuant to subsections (D)(5)(c)(1)(g) and (H)(24)(a)(6)(c);
or
 - (5) Determine the certificate holder committed one or more acts of

misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA and the complaint is appropriate for resolution only through formal discipline proceedings, pursuant to subsection (D)(5)(c)(1)(g) and (H)(9).

- f. If the board, after the formal interview is concluded, determines the acts of misconduct or violations warrant an emergency summary suspension, the board shall make an order for an expedited hearing, pursuant to subsections (H)(9)(d)(1) and (H)(12)(d).

9. Formal Disciplinary Proceedings.

- a. Commencement. Upon entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsection (H)(5)(c), the board may commence formal disciplinary proceedings.

- b. Decision of the Board. On review of the recommendation of the division director, the board may resolve the complaint through formal disciplinary proceedings and impose informal and formal sanctions pursuant to subsection (H)(24)(a) and (b) or may take other actions pursuant to this section. The board, pursuant to subsection (D)(5)(c)(1)(f)(iv) shall order the preparation of the documents necessary to commence formal disciplinary proceedings. The board may make procedural determinations to consolidate or sever any formal disciplinary matter pursuant to (D)(5)(c)(2)(e). The provisions of subsections (H)(24) and (H)(25) apply to the decision and order of the board. Formal disciplinary proceedings:

- (1) Provide the certificate holder the right to a hearing, pursuant to subsection (H)(12)(c);
- (2) May result in informal and formal sanctions, including an emergency summary suspension pursuant to subsections (H)(24)(5) and (6);
- (3) May result in costs and civil penalties pursuant to subsections (H)(24)(6)(j) and (k);
- (4) Are subject to special action proceedings pursuant to subsection (H)(27); and
- (5) Are not confidential.

- c. Notice to Certificate Holder. Upon commencement of formal disciplinary proceedings by a board order, division staff shall notify the certificate holder of the board's order and provide the certificate holder with a copy of the investigation summary, the division director's recommendations and the deputy director's finding of probable cause.

- d. Emergency Summary Suspension.

- (1) Upon entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsection (H)(5)(c), if the board finds the public health, safety or welfare is at risk and requires emergency action, the board shall order an

immediate emergency summary suspension of a certificate and set a date for an expedited hearing while formal disciplinary proceedings are pending.

- (2) Division staff shall ensure the order of emergency summary suspension is immediately served on the certificate holder with the notice of the emergency summary suspension and the expedited hearing as ordered by the board, pursuant to this subsection and subsection (H)(12)(d).
- (3) The hearing shall be held within ten days of the board's order of summary suspension.
- (4) The hearing officer shall only grant an extension of the ten day time period for holding the expedited hearing under extraordinary circumstances at the request of either party. The certificate holder may consent to a longer time period for the extension and the reasons for the extension shall be part of the record.
- (5) Division staff shall notify all applicable courts including superior court presiding judges, clerks of the superior court and superior court administrators of the emergency summary suspension.

10. Notice of Formal Statement of Charges and Proceedings; and Right to Hearing. Upon motion and order of the board, division staff shall:

- a. Prepare the formal statement of charges pursuant to subsection (H)(1)(i)(4) and include in the statement all of the following:
 - (1) A short and plain statement of the allegations;
 - (2) A reference to statutes, court rules, this section and the applicable ACJA section;
 - (3) A statement indicating the certificate holder has the right to a hearing, pursuant to subsection (H)(12)(c);
 - (4) A statement indicating the request for hearing shall be in writing and made within fifteen days of receipt of the notice, pursuant to subsection (H)(13); and
 - (5) A statement of the requirements for filing an answer pursuant to subsections (H)(11) and (17).
- b. Present the formal statement of charges to the board chair or designee for review and signature;
- c. File the signed formal statement of charges with the disciplinary clerk;
- d. Arrange for service of the notice of formal statement of charges to the certificate holder pursuant to Rule 4, Rules of Civil Procedure; and
- e. Amendments to the formal statement of charges are permissible upon motion and order of the board.

11. Answer to Formal Statement of Charges or Default. The certificate holder shall file an answer to the formal statement of charges within fifteen days after the date the statement is served, unless otherwise ordered by the board for good cause. Answers shall comply with Rule 8, Rules of Civil Procedure. Any

defenses not raised in the answer are waived. If a certificate holder fails to file an answer within the time provided, the certificate holder is in default and the factual allegations in the formal statement of charges are deemed admitted. The board may enter a finding or findings against the certificate holder of one or more of the assertions contained in the notice.

12. Right to Hearing.

- a. Except as provided in subsection (E)(1)(f)(2)(d)(iii), an applicant denied initial or renewal certification pursuant to subsections (E)(2)(c) or (G)(4) may request a hearing.
- b. Pursuant to subsection (E)(9)(b), an applicant denied reinstatement of certification may request a hearing, except if the applicant fails to provide required information within the requested time frame.
- c. A certificate holder served with a formal statement of charges pursuant to subsection (H)(9) may request a hearing.
- d. A certificate holder issued an emergency summary suspension pursuant to subsection (H)(9)(d)(1) shall have an expedited hearing.

13. Request for Hearing. The applicant or certificate holder shall request the hearing within fifteen days of the notice of denial of initial or renewal certification; or the notice of a formal statement of charges. The request shall include the ACJA subsection entitling a person or business to a hearing, the factual basis supporting the request for hearing and the relief demanded.

14. Selection of Hearing Officer for Certification or Discipline Hearing. Upon written request by an applicant or certificate holder entitled to a hearing pursuant to subsection (H)(12), the disciplinary clerk shall select a hearing officer.

- a. The disciplinary clerk shall select a hearing officer from the list of hearing officers appointed by the supreme court. The hearing officer shall have the following qualifications:
 - (1) Admitted to the practice of law in Arizona; and
 - (a) An active member in good standing for at least seven years with the State Bar of Arizona; or
 - (b) An active or retired judicial officer.
 - (2) Have knowledge in the procedure for conducting administrative hearings regarding the denial of initial or renewal of certification or alleged acts of misconduct or violations by a certificate holder pursuant to this section or the applicable ACJA section.
- b. The disciplinary clerk may request the presiding judge of the superior court in the county where the alleged acts of misconduct or violations occurred to supply a hearing room and any other necessary resources.

15. Time Line for Hearing. The disciplinary clerk or hearing officer shall:

- a. Ensure the hearing is held within 60 days of receipt of the request for hearing. The hearing officer may continue the hearing date upon request or stipulation of the parties, or upon the hearing officer's own motion, for good cause shown. The hearing officer shall grant continuances no more than 30 days at a time and may not extend the hearing on the merits beyond 120 days from the filing of the formal statement of charges.
 - b. If the request to continue the hearing is filed by division staff, the hearing officer shall ensure the hearing is held as soon as practical at the discretion of the hearing officer but no less than fifteen days after notice, as required by subsection (H)(16).
16. Notice of Hearing. The disciplinary clerk shall prepare and give notice of the hearing to the applicant or certificate holder and division staff, at least fifteen days prior to the date set for hearing.
- a. The notice shall include the following information:
 - (1) A statement of the legal authority and jurisdiction for conduct of the hearing;
 - (2) A statement of the date, time, place and nature of the hearing; and
 - (3) A reference to the particular sections of the statutes, rules and ACJA sections involved.
 - b. The disciplinary clerk shall accomplish service of the notice of hearing by United States mail to the last address of record on file with division staff. Service is accomplished in accordance with Rule 5, Rules of Civil Procedure by deposit in the United States mail.
 - c. If an attorney represents an applicant, certificate holder or division staff, the disciplinary clerk shall make service to the attorney of record.
17. Filings of Pleadings, Motions and Other Documents.
- a. The applicant or certificate holder and division staff shall file all pleadings, motions or other documents with the disciplinary clerk at least fifteen days prior to the scheduled hearing date, unless otherwise ordered by the hearing officer.
 - b. The applicant or certificate holder and division staff shall file responses to all pleadings, motions, or other documents with the disciplinary clerk within ten days of the filing of the pleading, motion, or other document.
 - c. The party filing the pleading, motion, or other document may reply within five days of the filing of the response to the motion.
 - d. Copies of all filings shall be delivered to the disciplinary clerk, the hearing officer and all parties to the proceeding.

18. Discovery.

- a. There is no discovery, except as provided in this section, unless mutually agreed to by the parties or ordered by the hearing officer.
- b. The hearing officer, upon written request, shall order a party to allow the requesting party to have a reasonable opportunity to inspect and copy, at the requesting party's expense, admissible documentary evidence or documents reasonably calculated to lead to admissible evidence prior to a hearing, provided the evidence is not privileged.
- c. Upon the hearing officer's own motion or request by a party, the hearing officer shall order the disclosure of documentary evidence intended for use at the hearing provided the evidence is not privileged. The hearing officer shall order the disclosure at least ten days prior to the hearing.
- d. A hearing officer shall review and rule upon any claims of privilege challenged by a party with respect to subsections (H)(18)(b) and (c).
- e. Within fifteen days of receipt of the notice of hearing, the parties shall exchange a list of witnesses containing the names, addresses and telephone numbers of all persons known to have knowledge of the relevant facts. The list of witnesses shall designate those persons the parties intend to call at the hearing and summarize the anticipated testimony of each witness.
- f. Parties may submit a motion to the hearing officer to take depositions of witnesses who cannot be subpoenaed or are otherwise unable to attend the hearing, for use as evidence at the hearing. The hearing officer may order the deposition of any other witness upon motion and for good cause shown. In either circumstance, the requesting party shall file a written motion for deposition with the hearing officer within ten days of the filing of the list of witnesses. The requesting party shall provide copies to all parties, setting forth the name and address of the witness, subject matter of the deposition, documents, if any, the parties are seeking for production, time and place proposed for the deposition and justification for the deposition.
- g. Parties shall file responses to requests for depositions, including motions to quash, within five days after the filing of the request for deposition. The hearing officer shall enter a final order regarding any motions for depositions.
- h. If a deposition is permitted and ordered by the hearing officer, the hearing officer shall issue a subpoena and written order. The subpoena and order shall identify the person to be deposed, scope of testimony to be taken, documents, if any, to be produced and the time and place of the deposition. The party requesting the deposition shall arrange for service of the subpoena and order with service on all parties five days before the time fixed for taking the deposition unless, for good cause shown, the time is shortened by the hearing officer.

19. Subpoena.

- a. For the purpose of the hearing, a hearing officer may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the subject of any hearing.
- b. Subpoenas shall be issued by a hearing officer and served in the same manner as provided by Rule 45, Rules of Civil Procedure. An employee of the court or any other person as provided by Rule 45, Rules of Civil Procedure may serve the subpoena.
- c. If a person fails to obey a subpoena served in accordance with the provisions of this section, the board or hearing officer may forward a report of the disobedience, together with a copy of the subpoena and proof of service, to the superior court and request the superior court judge issue an order requiring the appearance by a person or the production of documents, or both. The superior court may treat the failure to obey the subpoena as contempt of court and may impose penalties as though the person had disobeyed a subpoena issued by the court.

20. Prehearing Conference. The hearing officer may order and conduct a pre-hearing conference at the request of any party or on the hearing officer's own initiative. The purpose of the conference is to consider imposing limitations to promote simplicity in procedures, fairness in administration, elimination of unnecessary expense and protection of the public while preserving the rights of the certificate holder. The hearing officer may take any of the following actions:

- a. Establish a hearing schedule to ensure early and continuing control so the matter shall not be protracted because of lack of management;
- b. Dispose of outstanding procedural matters;
- c. Narrow the issues for adjudication;
- d. Dispose of preliminary legal issues, including ruling on pre-hearing motions;
- e. Obtain stipulations from the parties to the admission of evidence, facts and legal conclusions not contested;
- f. Identify witnesses and coordinate testimony; and
- g. Consider any other matters to aid in the expeditious conduct of the hearing.

21. Procedure at Hearings.

- a. Hearing Officer. The hearing officer shall preside over the hearing and decide all requests for a continuance, motions, determine the order of proof and manner of presentation of other evidence, issue subpoenas, place witnesses under oath, recess or adjourn the hearing and prescribe and enforce general rules of conduct and decorum. Informal disposition may be made of any case by stipulation,

agreed settlement, consent order or default.

b. Rights of Parties and Other Persons at a Hearing. At a hearing:

- (1) A party is entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the conduct of the proceeding.
- (2) An applicant or certificate holder may represent themselves or appear through counsel. An attorney who intends to appear on behalf of a party shall promptly file a notice of appearance with the disciplinary clerk providing the name, address and telephone number of the party represented and the name, address and telephone number of the attorney. A corporate officer or principal may represent a business entity in any proceeding under this section, as permissible pursuant to Arizona Supreme Court Rule 31.
- (3) All persons appearing before a hearing officer in any proceeding shall conform to the conduct expected in the superior court.

c. Conduct of Hearing.

- (1) All hearings are open to the public and shall conform to the provisions of ACJA § 1-202: Public Meetings. The hearing officer may close the hearing to the public, pursuant to ACJA § 1-202(C)(5).
- (2) The hearing officer may conduct a hearing in an informal manner and without adherence to the rules of pleading or evidence. The hearing officer may question witnesses and shall require any evidence supporting a decision is substantial, reliable and probative and shall exclude irrelevant, immaterial or unduly repetitious evidence. There is no right to a jury.
- (3) The hearing officer shall require all testimony taken is under oath or affirmation, except matters of which judicial notice is taken or entered by stipulation. The hearing officer may administer oaths and affirmations.
- (4) In all formal disciplinary matters brought as the result of an order by the board, evidence in support of the formal statement of disciplinary charges is presented first and carries the burden of proof by a preponderance of the evidence. In matters brought at the request of any other person or entity, including requests for hearing on the denial of initial or renewal of certification, the person or entity seeking the hearing shall present first and carries the burden of proof, by a preponderance of the evidence.

d. Record of Hearing.

- (1) The hearing officer shall ensure the oral proceedings, or any part of the oral proceedings, are recorded. Upon the request of any party to the proceedings and payment of any costs, the record of the proceedings shall be transcribed.
- (2) A certified reporter shall make a full transcript of the proceedings if requested by a party within five days prior to a hearing and upon order of the hearing officer. The requesting party shall pay the cost of the transcript. The hearing officer may require prepayment or a monetary deposit to cover the cost of the transcript. If transcribed, the record is part

of the court's record of the hearing and any other party with a direct interest shall receive a copy of the record, at the request and expense of the requesting party.

22. Recommendation Report of Hearing Officer.

- a. The hearing officer shall, within 30 days of the closing of the record of a hearing, prepare a written recommendation report and file the report with the disciplinary clerk. The recommendation report shall include findings of fact, based on a preponderance of the evidence and conclusions of law, separately stated.
- b. The hearing officer shall take testimony and receive evidence regarding alleged acts of misconduct or violations and possible sanctions. If the hearing officer recommends the board enter a finding the certificate holder committed one or more acts of misconduct or violations, the hearing officer shall include in the recommendation report, in a separately stated section, an analysis of mitigating and aggravating factors and recommended imposition of permissible sanctions pursuant to subsection (H)(24). The hearing officer shall base the recommendations exclusively on the matters officially noticed and the evidence presented.

(1) Mitigating factors may include but are not limited to the following:

- (a) The absence of a prior disciplinary record;
- (b) The absence of a dishonest motive;
- (c) The absence of a selfish motive;
- (d) Personal or emotional problems;
- (e) A timely good faith effort to make restitution or to rectify consequences of misconduct;
- (f) Full and free disclosure to the division staff, the board or the hearing officer;
- (g) A cooperative attitude toward any proceedings;
- (h) Inexperience in the practice of the profession or occupation;
- (i) Character or reputation;
- (j) Physical or mental disability;
- (k) Physical or mental impairment;
- (l) Delays in the disciplinary proceedings;
- (m) Interim rehabilitation;
- (n) Imposition of other penalties or sanctions;
- (o) Remorse; or
- (p) The remoteness of prior offenses.

(2) Aggravating factors may include but are not limited to the following:

- (a) A prior disciplinary record;
- (b) A dishonest motive;
- (c) A selfish motive;
- (d) Multiple offenses;
- (e) Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with this section, the applicable section of ACJA, court rules or orders of the hearing officer;
- (f) Submission of false evidence, false statements or other deceptive

- practices during the discipline process;
- (g) Refusal to acknowledge wrongful nature of the conduct;
- (h) Vulnerability of the victim;
- (i) Substantial experience in the profession or occupation; or
- (j) Indifference to making restitution.

- c. The disciplinary clerk shall distribute the hearing officer recommendation report to all parties and the board by United States mail to the last address on file with the division staff. Distribution is accomplished in accordance with Rule 5, Rules of Civil Procedure by deposit in the United States mail.
- d. The board may adopt or modify the hearing officer's recommendation report in whole or in part.
- e. The board may remand the matter to the hearing officer in whole or in part, designating the issues remanded. The board shall provide the hearing officer with an order identifying the issues remanded.

23. Rehearing. A party to the hearing may request a rehearing of the matters involved in the hearing. The requesting party shall file the written request with the hearing officer and the disciplinary clerk within fifteen days after the disciplinary clerk has distributed the hearing officer's recommendation report to the parties pursuant to subsection (H)(22)(c). The requesting party shall base the request for rehearing on one or more of the grounds listed in Rule 59, Rules of Civil Procedure. The hearing officer shall allow any party served with a request for rehearing to file a response within ten days of service. The hearing officer may grant a rehearing of the matters involved in the hearing and shall make the decision to grant or deny the request within ten days of the date the response for rehearing is filed.

24. Possible Actions for Resolution of a Complaint.

- a. Upon completion of an investigation concerning alleged acts of misconduct or violations by a certificate holder, which may or may not include a formal interview, informal or formal disciplinary proceedings, or a hearing, the board shall do one or more of the following:
 - (1) Request division staff to conduct further investigation;
 - (2) Refer the complaint to another entity with jurisdiction;
 - (3) Determine no violation exists and dismiss the complaint with or without prejudice;
 - (4) Determine no acts of misconduct or violation occurred and no discipline is warranted; however, the certificate holder's actions need modification or elimination and issue an advisory letter pursuant to subsection (D)(5)(c)(1)(g);
 - (5) Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules, this section, or the applicable ACJA specific sections or subsection (H)(6) and order an emergency summary suspension, pursuant to subsection (H)(9)(d);

- (6) Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules, this section, the applicable ACJA sections or subsection (H)(6) and issue an order imposing any or a combination of the following informal or formal disciplinary sanctions:
 - (a) Issue a letter of concern;
 - (b) Issue a censure;
 - (c) Resolve any found acts of misconduct or violations by consent order or other negotiated settlement;
 - (d) Place specific restrictions on a certificate;
 - (e) Place the certificate holder on probation for a set period of time under specified conditions;
 - (f) Mandate additional training for the certificate holder;
 - (g) Issue a cease and desist order pursuant to subsection (E)(6);
 - (h) Order suspension of a certificate for a set period of time with specific conditions for reinstatement;
 - (i) Order revocation of a certificate with specific conditions for reinstatement;
 - (j) Assess costs associated with the investigation and disciplinary proceedings; or
 - (k) Impose civil penalties associated with the investigation and disciplinary proceedings.
- b. The following provisions apply to the actions specified in subsection (H)(24)(a):
- (1) An advisory letter is not a discipline sanction and is confidential. While the conduct does not warrant any disciplinary action, the board believes the certificate holder should modify or eliminate certain practices and continuation of the activities leading to the documentation regarding the conduct being submitted to the board may result in future board action against the certificate holder. A certificate holder may file a response with the board no later than fifteen days after the date of the advisory letter. The certificate holder's response is confidential and division staff shall file the response in the complaint file.
 - (2) An informal disciplinary proceeding may result in a letter of concern but may not include a censure, restrictions on a certificate, probation, mandated additional training, suspension or revocation of the certificate, or imposition of civil penalties or costs. A letter of concern is a written informal discipline sanction and is not confidential or appealable. A certificate holder may file a response to the letter of concern no later than fifteen days after the date of the letter of concern. The certificate holder's response is public and division staff shall file the response in the complaint file.
 - (3) The board may impose informal discipline in combination with formal discipline.
25. Decisions and Orders. The board shall make final decisions or orders in writing and shall include findings of fact and conclusions of law, separately stated. The board shall make findings of fact by a preponderance of the evidence, based

exclusively on the evidence and on matters officially noticed and consider mitigating or aggravating factors pursuant to subsections (H)(22)(b)(1) and (2).

26. Notice of Board's Final Decision. Upon final order of the board regarding a certification or complaint matter, division staff shall provide written notice of the board's final decision and order:

- a. Regarding an initial or renewal certification matter, to the applicant or certificate holder within ten days, by deposit in the United States mail addressed to the last known address on file with division staff. Notice by mail is complete upon deposit in the United States mail.
- b. Regarding suspension or revocation of certification to the certificate holder by certified mail, return receipt requested, within two days, addressed to the last known address on file with division staff pursuant to subsection (H)(1)(i)(8). Division staff shall ensure the order of emergency summary suspension is immediately served on the certificate holder pursuant to subsection (H)(9)(d)(2). Division staff shall send any other disciplinary order by the board, not involving suspension or revocation of certification, to the certificate holder within ten days by deposit in the United States mail addressed to the last known address on file with division staff, pursuant to subsection (H)(1)(i)(7). Notice by mail is complete upon deposit in the United States mail.
- c. Regarding a complaint matter, to the complainant within ten days, pursuant to subsection H(1)(i)(7), by deposit in the United States mail addressed to the last known address on file with division staff. Notice by mail is complete upon deposit in the United States mail.

27. Filing of Special Action. Decisions of the board pursuant to this section and the applicable ACJA sections are final. Parties may seek judicial review through a petition for a special action within 35 days after entry of the board's final order. The petition for special action shall be pursuant to the Arizona Rules of Procedure for Special Actions.

7. Arizona Code of Judicial Administration § 7-203 (E) – Initial Certification

E. Initial Certification.

1. Application for Initial Certification. In addition to the requirements of ACJA § 7-201(E), the applicant shall meet the following requirements:
 - a. Fingerprinting. A.R.S. § 8-134(K) provides: "In carrying out the provisions of this section the supreme court shall require applicants for a confidential intermediary certificate to furnish fingerprints and the supreme court shall obtain criminal history record information pursuant to § 41-1750."
 - b. Initial Training. The division staff shall provide initial training for confidential intermediary applicants no less than one time per year. The training shall consist of a minimum of twelve hours of instruction. All applicants for initial

certification shall attend the entire initial training session.

- c. Fees. An applicant shall pay the fees for certification specified in subsection (K).
2. Qualifications for Initial Certification. In addition to the requirements of ACJA § 7-201, an applicant for certification as a confidential intermediary shall meet the following minimum qualifications and be:
 - a. 21 years of age or more;
 - b. A citizen of the United States or legal resident; and
 - c. In compliance with all requirements for application for initial certification pursuant to ACJA § 7-201 and subsection (E).
3. Examination. In addition to the requirements of ACJA § 7-201 (E), the division staff shall administer the examination no less than one time per year in conjunction with the initial training.
4. Decision Regarding Certification. These requirements are contained in ACJA § 7-201 (E).
5. Exemption from Certification. No certification is required of any agency licensed by the state or the Arizona Department of Economic Security pursuant to A.R.S. § 8-126 (1).

8. Arizona Code of Judicial Administration § 7-203 (F) – Role and Responsibilities of Certificate Holders

- F. Role and Responsibilities of Certificate Holders. In addition to the requirements of ACJA § 7-201 (F), the following provisions apply to confidential intermediaries:
 1. Standards of Conduct. Each confidential intermediary shall adhere to the standards of conduct in subsection (J) and A.R.S. § 8-134 (I).
 2. Identification. When accessing files related to a search, a confidential intermediary shall provide the valid photo identification issued by the confidential intermediary program with the request for appointment form identifying the individual as the confidential intermediary appointed to the case.
 3. Parties. A confidential intermediary shall provide services only to those parties who are eligible pursuant to A.R.S. § 8-134(A).
 - a. A.R.S. § 8-134(A) provides:
 - A. Any of the following persons may use the services of a confidential intermediary who is listed with the court:

1. The adoptive parents of an adoptee who is at least eighteen years of age or, if the adoptive parents are deceased, the adoptee's guardian.
2. An adoptee if the adoptee is at least eighteen years of age.
3. If an adoptee is deceased, the adoptee's spouse if the spouse is the legal parent or guardian of any child of the adoptee.
4. If an adoptee is deceased, any progeny of the adoptee who is at least eighteen years of age.
5. Either of the birth parents of an adoptee.
6. If the birth parent of an adoptee is deceased, the parent of the birth parent.
7. A biological sibling of the adoptee if the sibling is at least eighteen years of age.

b. A.R.S. § 8-134 further provides:

G. On receipt of a written statement from a physician that explains in detail how a health condition may seriously affect the health of the adoptee or a direct descendant of the adoptee, the court shall order the confidential intermediary program to appoint a confidential intermediary. The confidential intermediary shall make a diligent effort to notify an adoptee who has attained eighteen years of age, an adoptive parent or guardian of an adoptee who has not attained eighteen years of age or a direct descendant of a deceased adoptee that the nonidentifying information is available and shall be provided on written request.

H. On receipt of a written statement from a physician that explains in detail why a serious health condition of the adoptee or a direct descendent of the adoptee should be communicated to the birth parent or biological sibling to enable the birth parent or biological sibling to make an informed medical decision, the court shall order the confidential intermediary program to appoint a confidential intermediary. The confidential intermediary shall make a diligent effort to notify those individuals that the nonidentifying information is available and shall be provided on written request.

4. Sharing of Information. A.R.S. § 8-134 provides:

C. [A] confidential intermediary may inspect documents compiled pursuant to this article. Documents include the court records, division records, agency records and maternity home records. The confidential intermediary shall keep confidential all information

obtained during the course of the investigation. The intermediary shall use confidential information only to arrange a contact or share information between the person who initiates the search and the person who is the subject of the search. A confidential intermediary shall review the court record before making any contact with an adoptee to determine if an affidavit has been filed pursuant to subsection E of this section. Except as provided pursuant to subsection A, paragraphs 1, 2, 4 and 7 and subsection G of this section, a confidential intermediary shall not contact persons under twenty-one years of age.

- D. The confidential intermediary shall obtain written consent from the person who initiated the search and the person who is the subject of the search before arranging for the sharing of identifying information or a contact between them. If the confidential intermediary discovers the subject of the search is deceased or that the identity of the birth father was unknown to or not revealed by the birth mother, the confidential intermediary shall share this information with the person initiating the search. If the confidential intermediary, after a diligent effort, is unable to locate the subject of the search to obtain written consent to share information, the confidential intermediary shall share this information with the person initiating the search and prepare and place with the compiled documents a written report describing search efforts. If the person who initiated the search petitions the court to release identifying information, the court shall review the report prepared by the confidential intermediary and shall decide if the information may be released and in what manner the information may be released if the court determines there is good cause.
- E. An adoptive parent who has not informed an adoptee that the adoptee was adopted may file an affidavit so stating with the court where the adoption took place. The affidavit may be withdrawn at any time by the adoptive parent. If an affidavit is a part of the court record, the confidential intermediary shall not make contact with the adoptee unless the adoptive parent withdraws the affidavit and grants permission in writing or the adoptee has filed an affidavit stating that the adoptee knows about the adoption and wishes to make contact with the birth parent.
- F. A birth parent who has not informed the parent's biological offspring of the existence of the adoptee may file an affidavit so stating with the court where the adoption took place. The affidavit may be withdrawn at any time by the birth parent. If an affidavit is a part of the court record, the confidential intermediary shall not make contact with the biological sibling unless the birth parent withdraws the affidavit and grants permission in writing or the biological sibling has filed an affidavit stating that the biological sibling knows about the adoptee and wishes to make contact with the adoptee.

5. Notice of Withdrawal. A confidential intermediary may withdraw from a search for any reason.
 - a. If a confidential intermediary withdraws from a search, the confidential intermediary shall submit a notice of withdrawal form to division staff for that search.
 - b. The confidential intermediary shall submit to division staff a finalization report for each case the confidential intermediary withdraws from, pursuant to subsection (F)(6).
6. Finalization Report. A confidential intermediary shall file with division staff a finalization report on all completed searches or searches where the confidential intermediary has withdrawn within 45 days of the withdrawal. These requirements also apply when a confidential intermediary voluntarily surrenders their certificate or their certificate is placed on inactive status.
 - a. The finalization report shall include:
 - (1) A copy of the consent or refusal documents;
 - (2) Documentation of a consultation or mentoring agreement;
 - (3) A copy of the file review statement;
 - (4) Original appointment form issued by division staff; and
 - (5) A summary report of the search process and outcome.
 - b. The confidential intermediary shall file a copy of the finalization report with the juvenile court in the county the adoption was finalized. The finalization report shall include:
 - (1) Original consent or refusal documents;
 - (2) Documentation of a consultation or mentoring agreement; and
 - (3) A summary report of the search process and outcome.
7. Retention of Records. A confidential intermediary shall maintain all search related documentation, including receipts for every search for no less than five years.
8. Voluntary Surrender or Request for Inactive Status. In addition to the requirements of ACJA § 7-201(E)(7) and (E)(8), when a confidential intermediary voluntarily surrenders their certificate or is placed on inactive status, the confidential intermediary shall:
 - a. Submit a notice of withdrawal form pursuant to subsection (F)(5) for each open search approved for the confidential intermediary;
 - b. Provide notice of the withdrawal to each affected client; and
 - c. Submit the finalization report pursuant to subsection (F)(6).

9. Arizona Code of Judicial Administration § 7-203 (G) – Renewal of Certification

G. Renewal of Certification. In addition to the requirements of ACJA § 7-201(G), the following requirements apply:

1. Expiration Date. All certificates expire at midnight on October 31, 2006 and every even-numbered year thereafter.
2. Continuing Education. All confidential intermediaries shall complete at least twelve hours of continuing education pursuant to subsection (L).

10. Arizona Code of Judicial Administration § 7-203 (J) – Standards of Conduct

J. Standards of Conduct. The following standards of conduct apply to all confidential intermediaries pursuant to A.R.S. § 8-134(I) to establish minimum standards for performance by confidential intermediaries and to ensure confidentiality of the search and consent process.

1. Confidentiality.
 - a. The confidential intermediary shall keep paramount in all actions the importance and significance of confidentiality. The confidential intermediary shall exercise extreme care and diligence in respecting the privacy and confidentiality of all parties involved in the search.
 - b. The confidential intermediary shall keep confidential all information obtained during the course of the search and shall use said confidential information only to arrange a contact or to share that information which is permitted by A.R.S. § 8-134 between the person who initiated the search and the person who is the subject of the search.
 - c. The confidential intermediary shall review the court records to determine whether an affidavit has been filed by a party consenting to or blocking contact and act according to the wishes expressed by such an affidavit.
 - d. The confidential intermediary shall perform duties and responsibilities pursuant to Arizona laws relating to adoption including limitations on the release of information.
 - e. The confidential intermediary shall maintain required records in a professional manner while protecting the confidentiality of information contained in the records.
 - f. The confidential intermediary, having located the sought-after party, shall divulge only that information necessary to allow the client and located party to make an informed decision whether or not to consent to the release of identifying information. In order to meet the requirements of informed consent, the confidential intermediary shall share only the information necessary for the physical safety and protection of the parties and their

families. The confidential intermediary shall present such information in a nonjudgmental manner.

- g. On a case-by-case basis, the confidential intermediary may consult with another confidential intermediary sharing only that information on a case which is necessary for the specific purpose of soliciting ideas or information that would assist the confidential intermediary in carrying out the search to arrange a contact. The discharge summary shall clearly designate the consulting confidential intermediary. All confidentiality restrictions apply to both confidential intermediaries.
- h. The confidential intermediary may act as a mentor to assist an inexperienced confidential intermediary. The inexperienced confidential intermediary and the mentoring confidential intermediary may share confidential information for the purpose of instruction for the result of an increased skill level and a successful search. The request for appointment form and the discharge summary shall clearly designate the mentoring confidential intermediary. All confidentiality restrictions apply to both confidential intermediaries.

2. Skills and Knowledge.

- a. The confidential intermediary shall demonstrate adequate skills and knowledge to perform the work of a confidential intermediary and shall fulfill ongoing continuing education requirements to maintain professional growth as specified by ACJA § 7-201 and subsection (L).
- b. The confidential intermediary has an obligation to have knowledge and keep informed of all current and applicable laws regarding adoption issues.
- c. The confidential intermediary shall inform the parties of the availability of resources for support.
- d. The confidential intermediary has a responsibility to maintain a working knowledge of documents and information customarily contained in court and agency files.
- e. The confidential intermediary shall possess the necessary verbal and written communication skills sufficient to perform the confidential intermediary role, including an aptitude for communicating in person, by telephone and by correspondence.
- f. The confidential intermediary shall manage each case proficiently. Skills required include, but are not limited to, skills necessary to perform the search, make contact, maintain records and discharge the case in a timely fashion.
- g. The confidential intermediary shall keep the client reasonably informed about the status of the search and promptly comply with reasonable requests for information.

- h. The confidential intermediary shall prepare complete, accurate and understandable reports and discharge summaries.
 - i. The confidential intermediary shall conduct each search demonstrating efforts appropriate to the case.
 - j. The confidential intermediary shall perform a diligent and expedient search if the search is a court-ordered medical search.
 - k. The confidential intermediary shall otherwise perform a search using proper diligence pursuant to the agreement between the confidential intermediary and client.
3. Fees and Expenses.
- a. The confidential intermediary shall charge only those fees and expenses that are reasonable in amounts and necessarily incurred in order to conduct the search and provide services pursuant to Arizona law, ACJA § 7-201, this section and administrative orders adopted by the supreme court.
 - b. The confidential intermediary shall not charge more than the amounts permitted pursuant to subsection (M).
 - c. The confidential intermediary shall return to the client all fees collected in advance but not earned.
4. Sensitivity and Professionalism.
- a. The confidential intermediary shall exercise the highest degree of sensitivity and professionalism in all interactions with clients, the party located and others with whom they come in contact during the search. This includes the ability to empathize with others, be discreet in dealing with confidential information and recognize the emotions of adoption members.
 - b. The confidential intermediary shall strive to develop professional objectivity regarding biases, attitudes and beliefs about adoption and reunion issues.
 - c. The confidential intermediary shall demonstrate the ability to work with individuals regardless of differing culture, ethnicity or lifestyle.
 - d. The confidential intermediary shall not remove adoption case records from agency or court files or falsify or alter records.
 - e. The confidential intermediary shall not use materials or employ methods that are not consistent with the role of a confidential intermediary and shall not use materials or employ methods for personal benefit or in ways that conflict with the goals and role of a confidential intermediary.

- f. The confidential intermediary shall not assume the role of a therapist or counselor when acting in the capacity of a confidential intermediary, even if otherwise qualified to do so, but may provide initial education and information. A confidential intermediary shall demonstrate understanding of how the confidential intermediary role differs from that of a counselor or an advocate.
- g. The confidential intermediary shall not provide or offer to provide legal advice in the role of a confidential intermediary.
- h. The confidential intermediary shall not violate any rules or policies regarding the confidential intermediary program as established by the supreme court or conduct themselves in a manner that would reflect adversely on the judiciary, courts or other agencies involved in the administration of justice.

5. Ethics.

- a. The search and reunion of adopted individuals, adoptive parents and birth parents are highly charged emotionally. Because the primary sources of information about the unknown parties are confidential, the confidential intermediary is held to the highest standards of trust, impartiality and respect in the performance of services.
- b. The confidential intermediary shall perform services in a manner consistent with legal and ethical standards.
- c. The confidential intermediary shall not assume the role of an advocate or use coercion or undue influence to persuade any party to the search to take or not to take any action.
- d. The confidential intermediary shall be cognizant of personal limitations of knowledge and experience and may consult other experienced confidential intermediaries about a case if ACJA §§ 7-201, -203, administrative orders, Arizona statutes, standards of conduct or training manuals do not provide the guidance necessary to address difficult ethical issues. Nonetheless, the confidential intermediary is ultimately responsible for decisions made in regard to the case.
- e. The confidential intermediary shall avoid any conflict of interest or the appearance of a conflict of interest.
 - (1) The confidential intermediary shall not accept appointment to a case or continue on a case involving a relative or business associate or a personal friend where the relationship is such that the relative, business associate or personal friend may exert undue pressure on the confidential intermediary.
 - (2) The confidential intermediary shall not accept an appointment or continue on any case where the confidential intermediary cannot act in an objective manner or perform services as required.

- (3) The confidential intermediary shall not accept an appointment or serve as a confidential intermediary for the purpose of taking advantage of any party to the search for personal or professional gain.
 - f. The confidential intermediary shall avoid misrepresenting the purposes of the confidential intermediary program, the confidential intermediary's qualifications, fees or any other information relating to the role of the confidential intermediary. The confidential intermediary shall avoid misrepresenting to any client or any party located any circumstances or information specific to a case.
 - g. The confidential intermediary shall avoid utilizing certification in any manner to gain access to information or services for purposes other than those of the confidential intermediary program.
6. Compliance. The confidential intermediary shall perform all services and discharge all obligations in accordance with current Arizona and federal laws, ACJA §§ 7-201, -203 and administrative orders adopted by the supreme court governing the certification of confidential intermediaries.

11. Arizona Code of Judicial Administration § 7-203 (L) – Continuing Education Policy

L. Continuing Education Policy.

1. Purpose.
 - a. Ongoing continuing education is one method to ensure confidential intermediaries maintain competence in the field after certification is obtained. Continuing education also provides opportunities for confidential intermediaries to keep abreast of changes in the profession and the Arizona judicial system.
 - b. Pursuant to ACJA § 7-201(D) the board shall make recommendations to the supreme court regarding rules, policies, and procedures to implement and enforce the requirements regarding confidential intermediaries, including continuing education. This subsection is intended to provide direction to confidential intermediaries to ensure compliance with the continuing education requirements and to provide for equitable application and enforcement of the continuing education requirements.
2. Applicability. Pursuant to subsection (G)(2):
 - a. All confidential intermediaries shall attend six hours of approved continuing education each year for a total of twelve hours of continuing education during each certificate period. A confidential intermediary shall complete a minimum of one hour each year of the continuing education requirement in an ethics based curriculum. The confidential intermediary shall submit documentation of completion of the continuing education requirement upon the request of

the board or division staff. Hours of participation are not transferable to certification periods other than the one in which the participation occurred.

- b. From and after November 1, 2006 and for every renewal of certification after that date, all confidential intermediaries shall comply with these adopted policies regarding continuing education.

3. Responsibilities of Confidential Intermediaries.

- a. It is the responsibility of each confidential intermediary to ensure compliance with the continuing education requirements, maintain documentation of completion of continuing education, and to submit the maintained documentation to division staff upon the request of the board or division staff.
- b. Upon request, each confidential intermediary shall provide any additional information required by the board or division staff when reviewing renewal applications and continuing education documentation.
- c. Continuing education not recognized for credit upon board review does not in any way relieve the confidential intermediary of the responsibility to complete the required hours of continuing education.

4. Authorized Continuing Education Activities.

- a. Continuing Education. Continuing education activity shall address areas of proficiency, competency, and performance of a confidential intermediary, impart knowledge and understanding of the profession, search techniques, Arizona court jurisdiction and responsibilities, Arizona tribal court system, cultural issues, administrative matters and areas involving adoption and the adoption triad.
- a. Conferences. A confidential intermediary may receive continuing education credit for attendance at a conference relevant to the profession. A confidential intermediary may receive 100 percent of the continuing education credits for attendance at the conference, if the conference is directly related to the confidential intermediary profession. Introductory remarks, breaks, meals, business meetings, and general sessions of the conference do not qualify as continuing education hours.
- b. University, College and Other Educational Institution Courses. A confidential intermediary may receive continuing education credit for a course provided by a university, college or other institutionally accredited educational program if the confidential intermediary successfully completes the course with a grade of "C" or better or a "pass" in a pass/fail grading system. A confidential intermediary may receive continuing education credit if the course is relevant to the confidential intermediary profession, adoption, adoption searches or a related field, up to two times the number of credit hours awarded by the educational institution. The maximum hours of continuing education credits earned from educational course work shall not exceed 50 percent of the total number of continuing education hours required for renewal.

- c. Authoring or Coauthoring Articles. A confidential intermediary may receive continuing education credit for authoring or coauthoring an article directly related to areas of adoptions, adoption searches or triad issues, if the article is published in a state or nationally recognized professional journal and if the article is a minimum of 1,000 words in length. A confidential intermediary may earn a maximum of one hour of continuing education credit each year for authoring of articles. A confidential intermediary shall not receive credit for the same article published in more than one publication or republished in the same publication in later editions.
 - d. Self Study. A confidential intermediary may receive continuing education credit for self study activities, including correspondence courses, procedure manuals, video and audio tapes, online computer seminars, and other methods of independent learning. The maximum hours of continuing education credits earned in a self study format shall not exceed 50 percent of the total number of continuing education hours required for renewal.
 - e. Serving as Faculty. A confidential intermediary may receive continuing education credit for serving as an instructor, speaker, panel or faculty member of an instructional seminar directly related to the profession of confidential intermediary. A confidential intermediary may receive continuing education credit for the presentation time and up to two hours of preparation time for each hour of presentation. The maximum hours of continuing education credits earned as faculty credit shall not exceed 50 percent of the total number of continuing education hours required for renewal and a confidential intermediary shall not receive duplicate credit for repeating a presentation during the certificate period.
5. Minimum Time. Each continuing education activity shall consist of at least 30 minutes of actual clock time spent by a confidential intermediary in actual attendance at and completion of a continuing education activity. "Actual clock time" includes the total number of hours attended, minus the time spent for introductory remarks, breaks, meals, and business meetings. After completion of the first 30 minutes of a continuing education activity, credit shall be recognized in fifteen minute increments.
6. Maximum Credit. Unless the board otherwise determines a continuing education activity is directly related to the confidential intermediary profession, a confidential intermediary shall not receive more than 50 percent of the credit requirement for the certificate period through one activity.
7. Non-Qualifying Activities.
- a. The following activities shall not qualify for continuing education credit for confidential intermediaries:
 - (1) Program training completed to qualify for certification;
 - (2) Mentoring. A confidential intermediary shall not receive continuing education credit for mentoring activities;

- (3) Attendance or participation at professional or association business meetings, general sessions, elections, policymaking sessions or program orientation;
 - (4) Serving on committees or councils or as officers in a professional organization; and
 - (5) Activities completed as required by the board as part of a disciplinary action.
- b. Repeat of an Activity. Continuing education activities repeated during a certificate period do not qualify for credited duplicate hours.
 - c. If a confidential intermediary attends part, but not all of a continuing education activity, the confidential intermediary is not eligible to claim partial credit completion.
8. Documentation of Attendance or Completion. When attending or completing a continuing education activity, each confidential intermediary shall obtain documentation of attendance or completion from the sponsoring entity. At a minimum, this documentation shall include the:
- a. Name of the sponsor;
 - b. Name of the participant;
 - c. Topic of the subject matter;
 - d. Number of hours actually attended or the number of credit hours awarded by the sponsoring entity;
 - e. Date and place of the program; and
 - f. Signature of the sponsor or an official document from the sponsoring entity.
9. Compliance and Non-Compliance.
- a. Affidavit of Compliance. A confidential intermediary shall submit an affidavit of continuing education compliance when applying for renewal of certification. The affidavit shall be in the format provided by the division staff.
 - b. Proration of Continuing Education Requirement. A confidential intermediary whose certificate expires less than one year from the effective date of certification shall complete no less than six hours of continuing education credit during the balance of the certification period. In subsequent certification periods, the confidential intermediary shall complete the biennial twelve hour continuing education requirement. Proration of the continuing education requirement does not apply to confidential intermediaries who previously held certification and allowed their certification to lapse.
 - c. Extension or Waiver of Continuing Education Requirements. A confidential

intermediary seeking renewal of certification who has not fully complied with the continuing education requirements may request an extension or waiver of the continuing education requirements under the following conditions:

- (1) The confidential intermediary submits a notarized written statement to the board, explaining the facts regarding non-compliance and requesting an extension or waiver of the requirements no later than the September 15th preceding the October 31st expiration of the certificate. Upon a showing of extenuating circumstances, the board may grant an extension of a maximum of 90 days for the confidential intermediary to complete the continuing education requirement.
 - (2) The board shall determine whether extenuating circumstances exist. In reviewing the request, the board shall consider if the confidential intermediary has been unable to devote sufficient hours to fulfill the requirements during the certificate period because of:
 - (a) full-time service in the armed forces of the United States during a substantial part of the certificate period;
 - (b) an incapacitating illness documented by a statement from a currently licensed physician;
 - (c) a physical inability to travel to the sites of approved programs documented by a statement from a currently licensed physician; or
 - (d) any other special circumstances the board deems appropriate.
 - (3) A confidential intermediary whose certificate has been suspended or revoked by the board is not eligible to request a waiver or extension of the continuing education requirement.
 - (4) The board or division staff may request documentation or additional information from a confidential intermediary applying for renewal to verify compliance with the continuing education requirements. If the confidential intermediary fails to provide the requested documentation or additional information, the board may deem the application for renewal incomplete and deny renewal of certification.
- d. Random Audits of Continuing Education Compliance. During each renewal review period, the board shall direct division staff to randomly select a specified number of confidential intermediaries to demonstrate continuing education requirement compliance through submission of proof of continuing education participation. Refusal or failure to respond to a request from the board or division staff for audit documentation of continuing education compliance may result in denial of renewal of certification or disciplinary action pursuant to ACJA § 7-201 and this section.
- e. A confidential intermediary who fails to complete the continuing education requirement, completes any portion of the continuing education requirement late, falsifies documents, or misrepresents attendance or an activity is subject to any or all of the following actions of the board:
- (1) Assessment of the delinquent continuing education fee;
 - (2) Denial of renewal of certification; and
 - (3) Disciplinary action pursuant to ACJA § 7-201(H) and this section.

10. Board Decision Regarding Continuing Education Compliance.

- a. Upon a review of continuing education documentation and any applicable additional information requested, the board may:
 - (1) Recognize compliance by the confidential intermediary with the continuing education requirement;
 - (2) Require additional information from the confidential intermediary seeking renewal before making a decision;
 - (3) Recognize partial compliance with the requirement and order remedial measures; or
 - (4) Enter a finding of non-compliance.
- b. The division staff shall promptly notify the confidential intermediary, in writing, of the board's decision. A confidential intermediary may appeal the decision by submitting a written request for review to the confidential intermediary program within fifteen days of receipt of notification of the board's decision. The confidential intermediary requesting review may request to appear before the board at the next available regularly scheduled board meeting.
- c. The certification of a confidential intermediary who timely appeals a decision by the board regarding continuing education shall continue in force until a final decision is made by the board.
- d. The board shall make the decision on the appeal in writing. The decision is final and binding.

12. Arizona Code of Judicial Administration § 7-203 (M) – Client Fee Schedule

M. Client Fee Schedule. Pursuant to A.R.S. § 8-134(I), the supreme court shall administer the confidential intermediary program. The court shall adopt rules and procedures necessary to implement the program, including required and permissible fees. A confidential intermediary may charge clients an amount not to exceed the fees listed in this subsection for adoption search related services.

1. Initial Appointment Fee \$100.00

(This is a one time fee the confidential intermediary may charge and collect for services that result in a search appointment. These services include initial consultation related to services and processes and initial application with the confidential intermediary program to establish the search appointment.)

2. Investigation/Research Hourly Rate \$100.00

(Maximum rate allowable.)

3. Bookkeeping/Travel Hourly Rate \$ 50.00

(Maximum rate allowable.)

4. Direct Costs and Expenses Billable at Rates Incurred

(Current state of Arizona mileage allowance as posted on the Arizona government's website.)

13. Arizona Revised Statute § 8-106(E) – Consent to adoption; waiver; consent to the release of information; notification to potential fathers

- E. An agency, the division or an attorney participating or assisting in a direct placement adoption pursuant to section 8-130 shall obtain from a birth parent, at the time consent for adoption is obtained, a notarized statement granting permission or withholding permission for the child being adopted, when the child reaches eighteen years of age, to obtain identifying and nonidentifying information about the child and the consenting birth parent. The agency, division or attorney shall inform the birth parent at the time of obtaining the notarized statement that the decision to grant permission or withhold permission may be changed at any time by filing a notarized statement with the court. The most recent notarized statement shall operate as consent for the court to grant or withhold identifying and nonidentifying information.

14. Arizona Revised Statute § 8-121 – Confidentiality of information; exceptions

- A. It is unlawful, except for purposes for which files and records or social records or parts thereof or information therefrom have been released pursuant to subsection C of this section or section 8-120, 8-129 or 8-134, or except for purposes permitted by order of the court, for any person to disclose, receive or make use of, or authorize, knowingly permit, participate in or acquiesce in the use of, any information involved in any proceeding under this article directly or indirectly derived from the files, records, reports or other papers compiled pursuant to this article, or acquired in the course of the performance of official duties until one hundred years after the date of the order issued pursuant to section 8-116. After one hundred years has elapsed from the date of the order issued pursuant to section 8-116 the court shall transfer all files, records, reports and other documents in possession of the court relating to the adoption to the Arizona state library, archives and public records. The items transferred pursuant to this subsection shall be available for public inspection during business hours and may be made available in an alternative format.
- B. The provisions of this section shall not be construed to prohibit persons employed by the court, the division or an agency from conducting the investigations or performing other duties pursuant to this article within the normal course of their employment.
- C. This section does not prohibit persons employed by the court, the division, an attorney participating or assisting in a direct placement adoption pursuant to section 8-130 or an agency from providing partial or complete identifying information between a birth parent and adoptive parent when the parties mutually agree to share specific identifying information and make a written request to the court, the division or the agency.

- D. A person may petition the court to obtain information relating to an adoption in the possession of the court, the division or any agency or attorney involved in the adoption. Nonidentifying information may be released by the court pursuant to section 8-129. The court shall not release identifying information unless the person requesting the information has established a compelling need for disclosure of the information or consent has been obtained pursuant to subsection E of this section or from the birth parent pursuant to section 8-106. If a compelling need for disclosure of information is established, the court may decide what information, if any, should be disclosed and to whom and under what conditions disclosure may be made.
- E. An adoptee who is eighteen years of age or older or a birth parent may file at any time with the court and the agency, division or attorney who participated in the adoption a notarized statement granting consent, withholding consent or withdrawing a consent previously given for the release of confidential information. If an adoptee who is eighteen years of age or older and the birth mother or birth father have filed a notarized statement granting consent to the release of confidential information, the court may disclose information, except identifying information relating to a birth parent who did not grant written consent, to the adoptee or birth parent.
- F. This section does not prohibit a person from notifying a birth parent of the death of a child that the birth parent has placed for adoption.

15. Arizona Revised Statute § 8-134 – Confidential Intermediary

§ 8-134. Confidential intermediary

- A. Any of the following persons may use the services of a confidential intermediary who is listed with the court:
 - 1. The adoptive parents of an adoptee who is at least eighteen years of age or, if the adoptive parents are deceased, the adoptee's guardian.
 - 2. An adoptee if the adoptee is at least eighteen years of age.
 - 3. If an adoptee is deceased, the adoptee's spouse if the spouse is the legal parent or guardian of any child of the adoptee.
 - 4. If an adoptee is deceased, any progeny of the adoptee who is at least eighteen years of age.
 - 5. Either of the birth parents of an adoptee.
 - 6. If the birth parent of an adoptee is deceased, the parent of the birth parent.
 - 7. A biological sibling of the adoptee if the sibling is at least eighteen years of age.
- B. An adoption agency licensed by this state, the division or an individual who meets the requirements adopted pursuant to subsections F and G of this section may serve as a confidential intermediary.

- C. Notwithstanding sections 8-120 and 8-121, a confidential intermediary may inspect documents compiled pursuant to this article. Documents include the court records, division records, agency records and maternity home records. The confidential intermediary shall keep confidential all information obtained during the course of the investigation. The intermediary shall use confidential information only to arrange a contact or share information between the person who initiates the search and the person who is the subject of the search. A confidential intermediary shall review the court record before making any contact with an adoptee to determine if an affidavit has been filed pursuant to subsection E of this section. Except as provided pursuant to subsection A, paragraphs 1, 2, 4 and 7 and subsection G of this section, a confidential intermediary shall not contact persons under twenty-one years of age.
- D. The confidential intermediary shall obtain written consent from the person who initiated the search and the person who is the subject of the search before arranging for the sharing of identifying information or a contact between them. If the confidential intermediary discovers the subject of the search is deceased or that the identity of the birth father was unknown to or not revealed by the birth mother, the confidential intermediary shall share this information with the person initiating the search. If the confidential intermediary, after a diligent effort, is unable to locate the subject of the search to obtain written consent to share information, the confidential intermediary shall share this information with the person initiating the search and prepare and place with the compiled documents a written report describing search efforts. If the person who initiated the search petitions the court to release identifying information, the court shall review the report prepared by the confidential intermediary and shall decide if the information may be released and in what manner the information may be released if the court determines there is good cause.
- E. An adoptive parent who has not informed an adoptee that the adoptee was adopted may file an affidavit so stating with the court where the adoption took place. The affidavit may be withdrawn at any time by the adoptive parent. If an affidavit is a part of the court record, the confidential intermediary shall not make contact with the adoptee unless the adoptive parent withdraws the affidavit and grants permission in writing or the adoptee has filed an affidavit stating that the adoptee knows about the adoption and wishes to make contact with the birth parent.
- F. A birth parent who has not informed the parent's biological offspring of the existence of the adoptee may file an affidavit so stating with the court where the adoption took place. The affidavit may be withdrawn at any time by the birth parent. If an affidavit is a part of the court record, the confidential intermediary shall not make contact with the biological sibling unless the birth parent withdraws the affidavit and grants permission in writing or the biological sibling has filed an affidavit stating that the biological sibling knows about the adoptee and wishes to make contact with the adoptee.

- G. On receipt of a written statement from a physician that explains in detail how a health condition may seriously affect the health of the adoptee or a direct descendant of the adoptee, the court shall order the confidential intermediary program to appoint a confidential intermediary. The confidential intermediary shall make a diligent effort to notify an adoptee who has attained eighteen years of age, an adoptive parent or guardian of an adoptee who has not attained eighteen years of age or a direct descendant of a deceased adoptee that the nonidentifying information is available and shall be provided on written request.
- H. On receipt of a written statement from a physician that explains in detail why a serious health condition of the adoptee or a direct descendant of the adoptee should be communicated to the birth parent or biological sibling to enable the birth parent or biological sibling to make an informed medical decision, the court shall order the confidential intermediary program to appoint a confidential intermediary. The confidential intermediary shall make a diligent effort to notify those individuals that the nonidentifying information is available and shall be provided on written request.
- I. The Arizona supreme court shall administer the confidential intermediary program. The court shall adopt rules and procedures necessary to implement the program, including qualifications, required fees, minimum standards for certification, training and standards of conduct of confidential intermediaries, and shall establish the fees that may be charged by a confidential intermediary.
- J. A person shall not act as a confidential intermediary unless the person possesses a confidential intermediary certificate issued by the supreme court. In order to be certified as a confidential intermediary a person shall meet and maintain the minimum standards prescribed by this section and the rules adopted by the supreme court.
- K. In carrying out the provisions of this section the supreme court shall require applicants for a confidential intermediary certificate to furnish fingerprints and the supreme court shall obtain criminal history record information pursuant to section 41-1750. The applicant for certification shall pay a fee to the department of public safety to reimburse the department of public safety for the cost of obtaining the applicant's criminal history record information required by this section. The fee shall not exceed the actual cost of obtaining the applicant's criminal history record information.
- L. The actual and reasonable cost to the agency, division or court of providing information pursuant to the confidential intermediary program shall be paid by the person requesting the services of a confidential intermediary. If the juvenile court of a county is supplying the information, the actual and reasonable costs shall be paid to the clerk of the court of that county who shall transmit the monies to the county treasurer of that county for deposit in the juvenile probation services fund to be utilized by the juvenile court of that county for reimbursing the court for costs associated with providing information pursuant to the confidential intermediary

program. If the division is supplying the information, the actual and reasonable costs shall be paid to the division. If an agency is supplying the information, the actual and reasonable costs shall be paid to the agency.

22. United States Code, Title 25, Chapter 21, § 1901 – Indian Child Welfare

Sec. 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

- (1) that clause 3, section 8, article I of the United States Constitution provides that “The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes and, through this and other constitutional authority, Congress has plenary power over Indian affairs;
- (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
- (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
- (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
- (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.