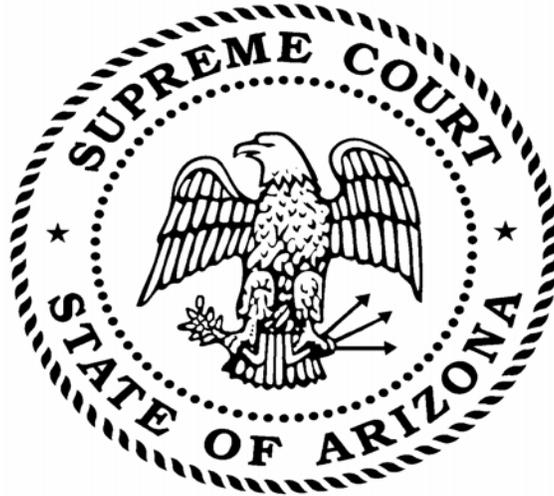


ARIZONA SUPREME COURT
Administrative Office of the Courts
Certification and Licensing Division



FIDUCIARY
INDIVIDUAL CERTIFICATION
CANDIDATE STUDY GUIDE

Fiduciary Program
1501 West Washington, Suite 104
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1. INTRODUCTION

AUTHORITY Arizona Revised Statute (“ARS”) § 14-5651, Arizona Supreme Court Administrative Order Numbers 2006-70 and 2006-71, and Arizona Code of Judicial Administration (“ACJA”) § 7-201 and § 7-202 establish the authority for administration of the Fiduciary Program by the Arizona Supreme Court. The Court administers the program through the Certification and Licensing Division of the Administrative Office of the Courts.

DEFINITION ACJA § 7-202 defines certified fiduciaries as persons who for a fee serve as:

- A court appointed guardian or conservator for one or more persons who are unrelated to the fiduciary,
- A court appointed personal representative and who is not related to the decedent, is not nominated in a will or by a power conferred in a will and is not a devisee in the will,
- A public fiduciary appointed pursuant to Arizona Revised Statutes § 14-5601, or,
- The Department of Veterans’ Services.

REQUIREMENT FOR EXAMINATION All candidates for certification as a fiduciary shall successfully pass a written examination.

ACJA § 7-201 and § 7-202 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.

EXEMPTIONS FROM CERTIFICATION Certification is not required of:

- Persons or business entities who serve as guardians, conservators or personal representatives for no fees or compensation monetary or otherwise,
- Persons who are related to the decedent or incapacitated or protected person,
- Persons who are nominated in a will or by a power conferred in a will,

- Persons who are a devisee in a will,
- Persons who serve as guardian ad litem,
- Persons serving as a foreign personal representative in an ancillary probate administration pursuant to A.R.S. § 14-4205.
- Persons serving as foreign conservator in an ancillary probate administration pursuant to A.R.S. §§ 14-5431 and -5432, or,
- Financial institutions.

PURPOSE OF THIS
HANDBOOK

The purpose of this handbook is to provide candidates with detailed information about the examination for certification as a fiduciary. 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	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 § 7-202.
CONFIRMATION OF ELIGIBILITY	Potential applicants for fiduciary certification must possess and demonstrate one or more of the qualifications to sit for the exam illustrated by ACJA § 7-202 (E)(1)(b). AJCA § 7-202 and instructions for registering to participate in the examination are available for candidate review on the Program website at www.supreme.state.az.us/fiduc/ . 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 § 7-202.
FEES	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.
SPECIAL ACCOMMODATIONS	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. 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.

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 fiduciary services (see Content Specifications, Section 4). The questions are designed to demonstrate candidates possess the basic knowledge, skills, and abilities to provide fiduciary 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 certified fiduciary in Arizona.

The examination is comprised of 100 questions, each worth one point. In order to achieve a passing grade on the examination, the candidate must answer 72 questions correctly (or 72 points) out of the possible 100 questions (or 100 points).

4. CONTENT SPECIFICATIONS

CONTENT AREAS

The content for the examination was developed by a focus group of fiduciaries 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 11%, there would be 11 questions on a 100-item examination. There are four content areas outlined in the content specifications:

- I. Certification (11%)
 - a. Applicant
 - b. Certificate holder
 - c. Ethics
- II. Guardianship (33%)
 - a. Adjudication process
 - b. Mandatory reporting and duties
 - (1) Reporting (annual, termination, death)
 - (2) Client visitation
 - (3) Surrogate decision making
 - c. Ethics
- III. Conservatorship (33%)
 - a. Adjudication process
 - b. Mandatory reporting and duties
 - (1) Inventories
 - (2) Accountings
 - (3) Derivative duties
 - c. Financial administration and management
 - (1) Fiduciary's competency limitations
 - (2) Insurance procurement
 - (3) Investment and estate planning
 - (4) Recordkeeping
 - d. Ethics
- IV. Personal representative (22%)
 - a. Adjudication process
 - b. Mandatory reporting and duties
 - c. Financial administration and management
 - d. Ethics

The above specified percentages of content area questions will be randomly ordered on the examination. For example, questions on financial administration 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 is a certificate holder required to notify division staff of a felony conviction?
 - A. 7
 - B. 10
 - C. 15
 - D. 20
2. A fiduciary was recently appointed as the guardian for a 10-year-old child who has been diagnosed as autistic. The client was institutionalized at age three and now resides in a state facility. The child shows no ability to express his thoughts and displays little emotion most of the time. What standard should a fiduciary use in making decisions for the client?
 - A. Prudent Man
 - B. Best interests
 - C. Self-determination
 - D. Substituted judgment
3. An adult daughter has been residing with her father for the past 11 months. The adult daughter coordinated medical care after her father was diagnosed with cancer. She paid his bills by preparing checks for his signature. A fiduciary was appointed and subsequently discovered the daughter used her father's funds to purchase a new vehicle titled solely in her name. What is the fiduciary's responsibility in this case?
 - A. Seek a restraining order against the daughter to prevent her from visiting her father
 - B. File a petition with the Attorney General and request prosecution of the daughter
 - C. Have the daughter declared exempt from inheritance under her father's will
 - D. Seek recovery and, if necessary, file an action in Superior Court
4. During the liquidation of assets, a personal representative places a classified ad in a local newspaper to sell the jewelry of a decedent. The personal representative's daughter-in-law responds to the ad with the intent to purchase the jewelry. How should the fiduciary handle this situation?
 - A. Decline to sell the jewelry to the daughter-in-law under any circumstances
 - B. Suggest the daughter-in-law have a friend purchase the jewelry for her
 - C. Wait to see if other interested buyers come forward and, if not, sell the jewelry to the daughter-in-law
 - D. Have the jewelry appraised by an independent appraiser and sell the jewelry to the daughter-in-law for the appraised value

ANSWERS: B, 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

The candidate must 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.

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.

NO SHOW POLICY

If a candidate fails to show up for the examination, the candidate must re-register for the examination and pay the applicable fees.

MATERIALS TO BRING

Other than photographic identification, the candidate will be provided with all material necessary to participate in the examination process.

PROHIBITED MATERIALS

Candidates cannot bring communication devices, reference materials, photographic equipment or electronic devices into the examination room. The following items are examples of prohibited materials:

- 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

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.

Examination staff will not be responsible for monitoring candidates' personal items during the examination. If a candidate report with prohibited materials or belongings the candidate will be asked to make alternative arrangements before you start the examination.

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.

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 Fiduciary 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. ACJA 7-201 (D) - Administration
2. ACJA 7-201 (E) – Initial Certification
3. ACJA 7-201 (F) – Role and responsibilities of Certificate Holders
4. ACJA 7-201 (G) – Renewal of Certification
5. ACJA 7-201 (H) – Complaints, Investigations, Disciplinary Actions, Proceedings and Certification and Disciplinary Hearings
6. ACJA 7-202 (A) - Definitions
7. ACJA 7-202 (E) – Initial Certification
8. ACJA 7-202 (G) – Renewal of Certification
9. ACJA 7-202 (H) – Complaints, Investigations, Disciplinary Actions, Proceedings and Certification and Disciplinary Hearings
10. ACJA 7-202 (J) – Code of Conduct
11. ARS 14-1201 (8) - Definitions
12. ARS 14-1401 - Notice; method and time of giving
13. ARS 14-1403 (4) - Pleadings; when parties bound by others; notice
14. ARS 14-2101 - Intestate estate; modification by will
15. ARS 14-2105 - Unclaimed estate; passage to state
16. ARS 14-2501 - Who may make a will
17. ARS 14-2502 - Execution; witnessed wills; holographic wills
18. ARS 14-2503 - Holographic will
19. ARS 14-2505 (B) - Witnesses; requirements
20. ARS 14-2517 - Penalty clause for contest; restriction
21. ARS 14-2602 - Passage of existing and after-acquired property by will
22. ARS 14-2901 - Nonvested property interest; general power of appointment; validity; exception
23. ARS 14-3101 (B) - Devolution of estate at death; administration on deaths of husband and wife
24. ARS 14-3102 - Necessity of statement or order of probate for will; exception
25. ARS 14-3201 - Venue for first and subsequent estate proceedings; location of property
26. ARS 14-3403 - Formal testacy proceeding; notice of hearing on petition
27. ARS 14-3706 - Duty of personal representative; inventory and appraisal
28. ARS 14-3801 - Notice to creditors
29. ARS 14-3805 – Priority of claims
30. ARS 14-3933 (B) - Closing estates; statement of personal representative

31. ARS 14-3971 - Collection of personal property by affidavit; ownership of vehicles; affidavit of succession to real property
32. ARS 14-5303 - Procedure for court appointment of a guardian of an alleged incapacitated person
33. ARS 14-5304 - Findings; order of appointment; limitations; filing
34. ARS 14-5307 (A) - Removal or resignation of guardian; termination of incapacity
35. ARS 14-5309 - Notices in guardianship proceedings
36. ARS 14-5310.01 (A) - Adult protective services workers; special visitation warrants
37. ARS 14-5311 - Who may be guardian; priorities
38. ARS 14-5312 - General powers and duties of guardian
39. ARS 14-5312.01 - Inpatient treatment; rights and duties of ward and guardian
40. ARS 14-5315 - Guardian reports; contents
41. ARS 14-5401 - Protective proceedings
42. ARS 14-5403 - Venue
43. ARS 14-5405 (B) - Notice in conservatorship proceedings
44. ARS 14-5408 - Permissible court orders
45. ARS 14-5410 - Who may be appointed conservator; priorities
46. ARS 14-5414 - Compensation and expenses
47. ARS 14-5418 - Inventory and records
48. ARS 14-5419 - Accounts
49. ARS 14-5421 - Recording of conservator's letters
50. ARS 14-5424 - Powers of conservator in administration
51. ARS 14-5425 (D) and (E) - Distributive duties and powers of conservator
52. ARS 14-5428 - Claims against protected person; enforcement
53. ARS 14-5501 (A) - Durable power of attorney; creation; validity
54. ARS 14-5604 - Claim against estate for expenses
55. ARS 14-5605 - Letter testamentary or of administration not required; statement to be filed; powers and duties
56. ARS 14-5606 - Additional powers and duties of the public fiduciary
57. ARS 14-5651 - Fiduciaries; certification; qualifications; conduct; removal; exemption; definitions
58. ARS 14-7231 (1) - Definitions
59. ARS 46-454 - Duty to report abuse, neglect and exploitation of incapacitated or vulnerable adults; duty to make medical records available; violation; classification
60. ARS 46-455 (P) - Permitting life or health of an incapacitated or vulnerable adult to be endangered by neglect; violation; classification; civil remedy; definition

9. APPLICABLE ACJA SECTIONS, RULES, ORDERS AND STATUTES

ACJA 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. Wilful violation of or wilful noncompliance with an order of the director regarding the audit, or wilful 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.

ACJA 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
23.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.

ACJA 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.

ACJA 7-201 (G) – Renewal of Certification

G. Renewal of Certification.

1. Expiration Date. Certificates expire on the date specified by the applicable section of the ACJA. All certificates shall continue in force until expired, voluntarily surrendered, placed on inactive status, suspended or revoked.
 - a. When a certificate holder has filed a timely and complete application for the renewal of certification, the existing certification does not expire until the administrative process for review of the renewal application has been completed.
 - b. The board may request an informal interview with the applicant for renewal, pursuant to subsection (D)(5)(c)(2)(b), to establish if additional information or an explanation of the information provided by the applicant is needed to determine if the applicant continues to meet the qualifications for certification in this section and the applicable section of the ACJA.
 - c. If the renewal application is denied, the existing certification does not expire until the last day for seeking a hearing on the decision to deny, pursuant to subsection (E)(2)(c)(5); or if a hearing is requested, until the final decision is made by the board pursuant to subsection (H)(25).
 - d. The certificate of a certificate holder who does not supply a complete renewal application and payment of the renewal fee in the specified time and manner to division staff shall expire as of the expiration date in the applicable section of the ACJA. Division staff shall treat any renewal application received after the expiration date as a new application.
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.

3. Additional Information. Before recommending renewal of certification, division staff may require additional information reasonably necessary to determine if the applicant continues to meet the qualifications specified in this section, which may include:
 - a. Background information, pursuant to subsection (E)(1)(a) and the applicable section of the ACJA;
 - b. A personal credit review and review of records pertaining to the applicant by division staff, pursuant to subsection (E)(1)(a)(5); and
 - c. Fingerprinting pursuant to subsection (E)(1)(d).

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.

ACJA 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 prehearing 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.

ACJA 7-202 (A) – Definitions

A. Definitions. In addition to ACJA § 7-201(A), the following definitions apply:

“Conservator” means “a person who is appointed by a court to manage the estate of a protected person” as provided in A.R.S. § 14-1201(8).

“Department director” means the individual appointed by the governor of Arizona as provided in A.R.S. § 41-604, to administer the Arizona Department of Veterans’ Services.

“Devise” means “when used as a noun, ... a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will” as provided in A.R.S. § 14-1201(12).

“Devisee” means “a person designated in a will to receive a devise” as provided in A.R.S. § 14-1201(13).

“Fiduciary” as provided in A.R.S. § 14-5651(J)(1) means:

...

(a) A person who for a fee serves as a court appointed guardian or conservator for one or more persons who are unrelated to the fiduciary.

(b) A person who for a fee serves as a court appointed personal representative and who is not related to the decedent, is not nominated in a will or by a power conferred in a will and is not a devisee in the will.

(c) A public fiduciary appointed pursuant to section 14-5601.

(d) The department of veterans’ services.

“Financial institution” means, as provided in A.R.S. § 14-5651(J)(2):

[A] bank that is insured by the federal deposit insurance corporation and chartered under the laws of the United States or any state, a trust company owned

by a bank holding company that is regulated by the federal reserve board or a trust company chartered under the laws of the United States or this state.

“Foreign personal representative” means “a personal representative appointed by another jurisdiction” as provided in A.R.S. § 14-1201(19).

“Guardian” means “a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes a person who is merely a guardian ad litem” as provided in A.R.S. § 14-1201(22).

“Guardian ad litem” means “a person appointed by the court to protect the interest of a minor or an incompetent in a particular case before the court” as provided in A.R.S. § 8-531(7).

“Personal representative” means a “personal representative includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status. A general personal representative excludes a special administrator” as provided in A.R.S. § 14-1201(38).

“Program coordinator” means “... the lawful agent for the purpose of accepting service of process in any action, suit or proceeding that relates to the duties of a fiduciary” as provided in A.R.S. § 14-5651(C)(6) and has the same meaning as “division staff” as provided in ACJA § 7-201(A).

“Public fiduciary” means the individual appointed by the board of supervisors in each county pursuant to A.R.S. § 14-5601 to conduct the affairs of the office of the public fiduciary in the county.

“Protected person” means “a minor or any other person for whom a conservator has been appointed or any other protective order has been made” as provided in A.R.S. § 14-5101(4).

“Related” means a spouse or a person associated by blood or marriage within the fifth degree of consanguinity and affinity.

“The fifth degree” means any person by blood, adoption, or marriage as follows: a spouse, or a surviving spouse, child, grandchild, great-grandchild, parent, grandparent, great-grandparent, great-great grandparent, sibling, nephew or niece, grand nephew or grand niece, great-grand nephew or great-grand niece, uncle or aunt, great uncle or great aunt, great-grand uncle or great-grand aunt, first cousin, or first cousin once removed.

“Trainee” means a person who would qualify for certification as a fiduciary but for the lack of required experience and who is seeking to gain the required experience to qualify as a certified fiduciary by working under the supervision of a certified fiduciary to perform authorized services, pursuant to this section.

“Ward” means “a person for whom a guardian has been appointed. ‘Minor ward’ means a minor for whom a guardian has been appointed solely because of minority” as provided in A.R.S. § 14-5101(8).

E. Initial Certification. In addition to the requirements of ACJA § 7-201(E), the applicant shall meet the following requirements:

1. Eligibility for Certification as an Individual.

a. A.R.S. § 14-5651 provides:

C. An applicant for certification shall:

1. Be at least twenty-one years of age.
2. Be a citizen of this country.
3. Not have been convicted of a felony.
4. Attest that the applicant has not been found civilly liable in an action that involved fraud, misrepresentation, material omission, misappropriation, theft or conversion.

...

6. Consent in the application form to the jurisdiction of the courts of this state for all actions arising under this article or article 6 of this chapter and appoint the fiduciary program coordinator as the lawful agent for the purpose of accepting service of process in any action, suit or proceeding that relates to duties of fiduciaries. . . .

b. In addition, the applicant, in order to sit for the fiduciary examination, shall possess one of the following:

(1) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test. In addition, the applicant shall have a minimum of three years of work experience within the previous ten years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship or conservatorship in one or a combination of the following circumstances:

- (a) Under the supervision of a certified fiduciary;
- (b) Under the supervision of a bank trust or trust company officer; or
- (c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;

(2) A four year bachelor of arts or bachelor of science degree from an accredited college or university. In addition, the applicant shall have a minimum of one year of work experience within the previous ten years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship or personal representatives, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship or conservatorship in one or a combination of the following circumstances:

- (a) Under the supervision of a certified fiduciary;

- (b) Under the supervision of a bank trust or trust company officer; or
 - (c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;
- (3) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and a certificate of completion from a paralegal or legal assistant program that is institutionally accredited but not approved by the American Bar Association, that requires successful completion of a minimum of 24 semester units, or the equivalent, in fiduciary specialization courses. In addition, the applicant shall have a minimum of two years of work experience within the previous ten years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship, or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked or performed services in the administration of a trust, decedent's estate, guardianship or conservatorship in one or a combination of the following circumstances:
- (a) Under the supervision of a certified fiduciary;
 - (b) Under the supervision of a bank trust or trust company officer; or
 - (c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;
- (4) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and a certificate of completion from an accredited educational program designed specifically to qualify a person for certification as a fiduciary under this section. In addition, the applicant shall have a minimum of two years of work experience within the previous ten years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship, or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship or conservatorship in one or a combination of the following circumstances:
- (a) Under the supervision of a certified fiduciary;
 - (b) Under the supervision of a bank trust or trust company officer; or
 - (c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health or disability law;
- (5) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and a certificate of completion from a paralegal or fiduciary program approved by the American Bar Association. In addition, the applicant shall have a minimum of two years of work experience within the previous ten years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship, or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship or conservatorship in one or a combination of the following circumstances:
- (a) Under the supervision of a certified fiduciary;
 - (b) Under the supervision of a bank trust or trust company officer; or

- (c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health or disability law;
 - (6) A juris doctorate degree from a law school approved by the American Bar Association and currently admitted to the practice of law, active and in good standing in the state where the applicant was admitted;
 - (7) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and appointment as a foreign fiduciary where the fiduciary served pursuant to a court order. In addition, the applicant shall have a minimum of three years of work experience specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship, or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship, or conservatorship; or
 - (8) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and a registered master guardian certification in good standing with the National Guardianship Association.
- c. The applicant shall take and pass a written examination testing the applicant's knowledge and minimum competencies to serve as a fiduciary. Admission to sit for the examination is based upon the requirements in subsection (E)(1)(b). In order to sit for the examination the applicant shall meet one of the requirements before being granted admission to sit for the examination.
- d. An applicant who is unable to meet one of the requirements of subsection (E)(1)(b) may petition the board to waive the requirement and permit the applicant to sit for the fiduciary certification examination. The petition shall contain a signed affidavit by the petitioner:
- (1) Demonstrating the extraordinary circumstance why the board should grant the petitioner relief from the requirements of subsection E(1)(b); and
 - (2) Demonstrating, to the board's satisfaction, the reasons to believe the petitioner possesses the sufficient knowledge and the minimum competencies to sit for the examination.
 - (3) If the board finds the petitioner has demonstrated extraordinary circumstances to be granted relief from the requirements of subsection (E)(1)(b) and possesses sufficient knowledge and the minimum competencies to sit for the fiduciary examination, the board shall grant the petition. Division staff shall notify the petitioner within ten days after the board's decision to grant the petitioner's request to sit for the examination. The notice of the board's decision shall include the next available date for the petitioner to sit for the fiduciary examination.
 - (4) If the petitioner is granted permission to sit for the examination, the petitioner shall follow all examination requirements and procedures as specified in ACJA § 7-201(E)(1)(f).
 - (5) If the board finds the petitioner does not demonstrate extraordinary circumstances and does not possess sufficient knowledge and the minimum competencies to sit for the examination, the board shall deny the

petitioner's request to sit for the examination. The petitioner has no right to a hearing on the board's denial.

- e. On successfully passing the examination, the applicant shall attend and complete a session on the role and responsibilities of the certified professional fiduciary as provided by division staff.
 - f. The applicant shall have 90 days from the date of passing the examination or reexamination to complete the certification process. Division staff shall treat an applicant who does not complete the process within 90 days as a new applicant and require the applicant to submit a new application and pay all initial certification, examination and training fees.
2. Eligibility for Certification as a Business Entity. For qualification for business entity certification, the corporation, limited liability company or partnership shall meet the following conditions prior to certification:
- a. Each business entity shall designate one or more principals who are certified as an individual fiduciary. The principal shall supervise all other certified fiduciaries, trainees and staff working for the corporation, limited liability company, or partnership who work with wards, protected persons or decedent estates. The principal shall adopt policies and procedures giving reasonable assurance all certified fiduciaries and trainees conform to the applicable rules, statutes and sections of the ACJA and non-certified staff conduct themselves in accordance with the applicable rules, statutes and sections of the ACJA. If any designated principal is no longer able or willing to serve as the principal, the certified business entity shall supply division staff with the name of the new designated principal within fourteen days. Short term vacations or illnesses are not examples of inability to serve. The business entity shall file the executed principal form with division staff naming the new principal within 30 days after the designated principal has provided notice to the business entity the designated principal is no longer willing or able to serve. The certified business entity shall ensure the new designated principal is certified as an individual fiduciary. The designated principal may represent the business entity in any proceeding under this section or ACJA § 7-201.
 - b. The principal shall file a list of all certified fiduciaries and trainees acting for or on behalf of the business entity with the initial application.
 - c. The principal shall file articles of incorporation and letters of good standing from the Arizona Corporation Commission or the Secretary of State with the initial application.
 - d. The principal shall agree no less than one certified fiduciary shall assume the primary responsibility for each court appointment as a guardian, conservator or personal representative.
 - e. The principal shall file with the program, by June 30 each year, a list of all certified fiduciaries and trainees acting for or on behalf of the business entity.

3. Eligibility for Certification of the Arizona Department of Veterans' Services. For qualification for certification the department shall meet the following conditions prior to certification:
 - a. The department director shall designate a certified fiduciary who shall act as the principal. The designated principal shall supervise all other certified fiduciaries, trainees and staff working for the department in furtherance of its duties pursuant to A.R.S. §§ 41-603(A) and -605. The principal shall adopt policies and procedures giving reasonable assurance all certified fiduciaries and trainees conform to the applicable rules, statutes and sections of the ACJA and non-certified staff conduct themselves in accordance with the applicable rules, statutes and sections of the ACJA. If the designated principal is no longer able or willing to serve as the principal, the department shall supply division staff with the name of the new designated principal within fourteen days. Short term vacations or illnesses are not examples of inability to serve. The department shall file the executed principal form with division staff naming the new principal within 30 days after the designated principal has provided notice to the department the principal is no longer able or willing to serve. The department director or designated principal may represent the department in any proceeding under this section or ACJA § 7-201.
 - b. The designated principal shall file a list of all certified fiduciaries and trainees, acting for or on behalf of the business entity with the initial application.
 - c. The designated principal shall agree no less than one certified fiduciary shall have the primary responsibility for each court appointment as a guardian, conservator or personal representative.
 - d. The designated principal shall file with the program, by June 30 each year, a list of all certified fiduciaries and trainees, acting for or on behalf of the department.
4. Eligibility for Certification of the Office of the Public Fiduciary. For qualification for certification the office shall meet the following conditions prior to certification:
 - a. The public fiduciary shall obtain certification as an individual fiduciary and shall act as the principal. The public fiduciary may designate a department employee who is a certified fiduciary as principal for a time not to exceed 120 days. If the time period exceeds 120 days and upon a showing of good cause, the county board of supervisors shall appoint a certified fiduciary to act as interim principal. The public fiduciary or designated principal shall supervise all other certified fiduciaries, trainees and staff working for the public fiduciary in furtherance of its duties pursuant to A.R.S. §§ 14-5602, -5603, -5604, -5605 and -5606. The principal shall adopt policies and procedures giving reasonable assurance all certified fiduciaries and trainees conform to the applicable rules, statutes and sections of the ACJA and non-certified staff conduct themselves in accordance with the applicable rules, statutes and sections of the ACJA. If the designated principal is no longer able or willing to serve as the principal, the public fiduciary office shall supply division staff with the name of the new designated principal within fourteen days. Short term vacations or illnesses are

not examples of inability to serve. The public fiduciary office shall file the executed principal form with division staff naming the new principal within 30 days after the designated principal provided notice to the county board of supervisors the principal is no longer willing or able to serve. The public fiduciary or the designated principal may represent the public fiduciary office in any proceeding under this section or ACJA § 7-201.

- b. The public fiduciary shall file a list of all certified fiduciaries and trainees, acting for or on behalf of the public fiduciary with the initial application.
 - c. The public fiduciary shall agree no less than one certified fiduciary shall have the assigned primary responsibility for each court appointment as a guardian, conservator or personal representative.
 - d. The public fiduciary shall file with the program, by June 30 each year, a list of all certified fiduciaries and trainees, acting for or on behalf of the office of the public fiduciary.
5. Procedures for Initial Certification. In addition to the requirements of ACJA § 7-201(E), applicants shall meet the following requirements:

- a. Fingerprints. A.R.S. § 14-5651(B) provides:

As a condition of appointment, the supreme court shall require each applicant for the position of fiduciary to submit a full set of fingerprints to the supreme court for the purpose of obtaining a state and federal criminal records check to determine the suitability of the applicant pursuant to § 41-1750 and public law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

- b. Bond. A.R.S. § 14-5651(A) provides: “At a minimum the rules adopted pursuant to this subsection shall include the following: . . . 2. A requirement that fiduciaries post a cash deposit or surety bond with the supreme court.” A bond is required of each applicant, business entity and each employee of a business entity assigned primary responsibility for court appointments seeking certification.
- c. A.R.S. § 14-5651(D) specifies the purpose of the bond:

The superior court shall, and any person may, notify the supreme court if it appears that a fiduciary has violated a rule adopted under this section. The supreme court shall then conduct an investigation and hearing pursuant to its rules. If the supreme court determines that the fiduciary committed the violation it may revoke the fiduciary’s certification or impose other sanctions, including civil penalties, and shall notify the superior court in each county of this action. The supreme court may then also require the fiduciary to forfeit a cash deposit or surety bond to the extent necessary to compensate

the court for the expenses it incurred to conduct the investigation and hearing.

- d. This bond is separate from the requirements of A.R.S. §§ 14-5411(A) and - 3603(A). A.R.S. § 14-5411(A) provides: "Except as otherwise provided in subsection B, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties according to law, with sureties as it shall specify" A.R.S § 14-3603 provides:

A bond is required of a personal representative unless either:

1. The will expressly waives the bond.
 2. All of the heirs if no will has been probated, or all of the devisees under a will which does not provide for waiver of the bond, file with the court a written waiver of the bond requirement. A duly appointed guardian or conservator may waive on behalf of his ward or protected person unless the guardian or conservator is the personal representative.
 3. The personal representative is a national banking association, a holder of a banking permit under the laws of this state, a savings and loan association authorized to conduct trust business in this state, a title insurance company which is qualified to do business under the laws of this state, a trust company holding a certificate to engage in trust business from the superintendent of financial institutions or the public fiduciary.
 4. The petition for formal or informal appointment alleges that the probable value of the entire estate will permit summary procedures under § 14-3973 and the surviving spouse, or the nominee of the surviving spouse, is applying for appointment as personal representative.
- e. For initial certification the applicant shall file with the application a cash or surety bond for the purposes described in A.R.S. § 14-5651(D) and subsection (E)(5)(b). Upon certification the certificate holder shall maintain the cash or surety bond as long as the certification is in place. Upon expiration or surrender of the certification, the certificate holder may apply in writing to division staff for return of any cash bond not forfeited. Division staff shall return any cash bond not forfeited within 120 days.
- f. A bond may be either a surety or cash bond as follows:
- (1) A surety bond in favor of the state of Arizona and the supreme court. The applicant shall have the bond executed on an approved bond form and issued by an insurer authorized to do business in Arizona and holding a certificate of authority issued by the director of the Arizona Department of Insurance. The bond shall have a total aggregate liability of \$10,000 and

shall contain a provision the insurer shall not cancel the bond without at least 30 days prior written notice to the supreme court by the insurer.

- (2) A cash bond in the amount of \$10,000 for deposit with the state treasurer in a special non-interest bearing account.
- (3) If the applicant is found by the board to have violated any section adopted pursuant to A.R.S. § 14-5651, the board may cause the forfeiture of the cash or surety bond, as applicable, to the supreme court. If the bond is forfeited, division staff shall deposit the funds in the confidential intermediary and fiduciary fund established pursuant to A.R.S. § 8-135.

g. Bond Exemption. State and local governmental agencies and agency staff, including the office of the public fiduciary and the Arizona Department of Veterans' Services, are not required to post the surety or cash bond.

6. Exemptions from Certification.

a. Certification is not required of:

- (1) Any person or business entity who shall serve, if court appointed, as a guardian, conservator or personal representative for one or more persons for no fees or compensation monetary or otherwise;
- (2) Any person who shall serve, if court appointed, as a personal representative, guardian or conservator if they are related to the decedent or incapacitated or protected person;
- (3) Any person who shall serve, if court appointed, as a personal representative who is nominated in a will or nominated by a power conferred in a will;
- (4) Any person who shall serve, if court appointed, as a personal representative who is a devisee in the will;
- (5) Any person appointed to serve as a guardian ad litem;
- (6) Any person serving as a foreign personal representative in an ancillary probate administration pursuant to A.R.S. § 14-4205;
- (7) Any person serving as a foreign conservator pursuant to A.R.S. §§ 14-5431 and -5432; or
- (8) Pursuant to A.R.S. § 14-5651(G) that provides: "The requirements of this section do not apply to a financial institution. This exemption does not prevent the superior court from appointing a financial institution as a fiduciary"

b. In addition, A.R.S. § 14-5651(G) provides: ". . . The supreme court may exempt a fiduciary from the requirements of this section for good cause."

c. Emergency Exemption. Any person or business entity seeking court appointment as a conservator or guardian or personal representative may apply on the form prescribed by the supreme court for an emergency exemption from certification based on the criteria set forth in this section and comply with this section by filing an application for exemption, on the approved form, with the clerk of the superior court in the county where the appointment is requested. The presiding judge of the superior court or

designated judicial officer may grant or deny the exemption under the following conditions:

- (1) The presiding judge or designated judicial officer finds the applicant possesses the experience, education and skills necessary to meet the needs of the ward, protected person or decedent's estate. In making this determination, the presiding judge or designated judicial officer may consider the following:
 - (a) The nature of the relationship with the ward, protected person, or deceased person;
 - (b) The type of decisions the fiduciary may make;
 - (c) The amount of assets the fiduciary shall manage;
 - (d) Any limitations or conditions on the appointment;
 - (e) The fees the fiduciary shall charge;
 - (f) The applicant is not acting as a fiduciary in any other case unless related to the ward or protected person by blood or marriage;
 - (g) The applicant has known the ward, protected person or deceased person for at least two years;
 - (h) No prejudice or harm is likely to occur if the exemption is granted;
 - (i) There is an emergency need for the temporary appointment;
 - (j) No relative is willing and able to serve; and
 - (k) No certified fiduciary is willing and able to serve.
 - (2) The presiding judge or designated judicial officer may hold a hearing or request additional information in order to make any required finding.
 - (3) If the presiding judge or designated judicial officer enters an order granting an exemption the following restrictions shall apply:
 - (a) Temporary appointment is effective for a period of up to 90 days. The presiding judge may grant one extension for a period of up to 90 days. The purpose of the temporary appointment is to allow the individual to seek and obtain certification during this temporary appointment;
 - (b) The appointee shall apply for fiduciary certification with the supreme court; and
 - (c) The appointee shall not receive any compensation in any form while the appointee is serving in the capacity of an emergency exempted fiduciary, except for reimbursement for reasonable expenses, subject to court approval.
 - (4) Within fifteen days of granting the exemption from certification, the presiding judge or designated judicial officer shall forward to division staff a copy of the application for exemption, the petition and order granting the emergency appointment of guardian or conservator and the minute entry.
7. Decision Regarding Certification. In addition to the reasons specified in ACJA § 7-201(E), the board may refuse to certify an applicant if the applicant or an officer, director, partner, member, trustee or manager of the applicant was removed as a court appointed guardian, conservator, or personal representative for cause and shall refuse to certify the applicant if the applicant or an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony.

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

1. Expiration Date. All certifications expire at midnight, on May 31st each even numbered year.
2. Continuing Education. During each renewal cycle all certified fiduciaries shall attend twenty hours of continuing education as required by the continuing education policies in subsection (L).
3. All business applicants shall include a letter of good standing from the Arizona Corporation Commission or Arizona Secretary of State with the application for renewal of certification.
4. Decision Regarding Renewal. In addition to the reasons specified in ACJA § 7-201(G), the board may refuse to renew the certification of an applicant if the applicant or an officer, director, partner, member, trustee or manager of the applicant was removed as a court appointed guardian, conservator, or personal representative for cause or sanctioned by the court regarding the administration of a guardianship, conservatorship, or personal representative. The board shall refuse to renew the certification of the applicant if the applicant or an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony.

ACJA 7-202 (H) – Complaints, Investigations, Disciplinary Actions, Proceedings and Certification and Disciplinary Hearings

H. Complaints, Investigation, Disciplinary Proceedings and Certification and Disciplinary Hearings. In addition to the requirements in ACJA § 7-201(H) the following requirements apply:

1. Reporting of Complaints. A.R.S. § 14-5651 provides:
 - a. A person who in good faith provides information or testimony regarding a fiduciary’s misconduct or lack of professionalism is not subject to civil liability.
 - b. Persons appointed by the chief justice to serve in an advisory capacity to the fiduciary program, staff of the fiduciary program, hearing officers and employees of the administrative office of the courts who participate in the fiduciary program are immune from civil liability for conduct in good faith that relates to their official duties.
2. Possible Actions. Upon completion of an investigation concerning alleged acts of misconduct or violations by a certificate holder, which may or may not involve a hearing, the board may, in addition to any other actions specified in ACJA § 7-201(H):

- a. Require the certificate holder forfeit the surety or cash bond; or forfeit the surety or cash bond to the extent necessary to compensate the court for the investigation and hearing process if applicable.
 - b. Determine and impose a civil penalty, pursuant to A.R.S. § 14-5651(D). The civil penalty may not exceed \$500 for each failure or violation and may not exceed an aggregate civil penalty of \$15,000. The certified fiduciary shall pay the civil penalty to the supreme court for remission to the state treasurer for deposit in the general fund.
3. Judicial Review. In addition to the requirements in ACJA § 7-201(H), the following requirements apply: A.R.S. § 14-5651(H) provides: “This section does not grant any fiduciary or any applicant for a certificate as a fiduciary the right to a direct appeal to the supreme court.”

ACJA 7-202 (J) – Code of Conduct

J. Code of Conduct. This code of conduct is adopted by the supreme court to apply to all certified fiduciaries pursuant to A.R.S. § 14-5651(A)(1) in the state of Arizona. The purpose of this section is to establish minimum standards of performance for certified fiduciaries.

1. Decision Making. The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.
 - a. The fiduciary shall make all reasonable efforts to determine the preferences of the ward or protected person, both past and current, regarding all decisions the fiduciary is empowered to make.
 - b. The fiduciary shall make decisions in accordance with the determined preferences of the ward or protected person, past or current, in all instances except when the fiduciary is reasonably certain the decision will result in substantial harm.
 - c. When it is not possible to determine the preferences of the ward or protected person, the fiduciary shall make decisions in the best interest of the ward or protected person.
 - d. The fiduciary shall maintain an awareness of their limitations, shall carefully consider the views and opinions of those involved in the treatment, care and management of the ward, protected person, or estate and shall also seek independent opinions when necessary.
 - e. The fiduciary shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Regardless, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, protected person, or estate.

- f. The fiduciary shall refrain from decision making in areas outside the scope of the guardianship, or conservatorship, or personal representative order. When necessary and in the best interests of the ward or protected person, the fiduciary shall assist the ward or protected person by ensuring decisions are made in an autonomous fashion.
 2. Ethics. The fiduciary shall exhibit the highest degree of trust, loyalty and fidelity in relation to the ward, protected person, or estate.
 - a. The fiduciary shall manage and protect the personal and monetary interests of the ward or protected person and foster growth, independence and self reliance to the maximum degree.
 - b. The fiduciary shall avoid self-dealing or the appearance of a conflict of interest. Self-dealing or a conflict of interest arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent. In situations where no other services are available, the fiduciary shall disclose the potential conflict in a petition to the superior court, seeking approval prior to the provision of services.
 - c. The fiduciary shall vigorously protect the rights of the ward or protected person against infringement by third parties.
 - d. The fiduciary shall, whenever possible, provide all pertinent information to the ward or protected person unless the fiduciary is reasonably certain substantial harm will result from providing this information.
 - e. The fiduciary shall ensure any document filed with the superior court is timely.
 - f. The fiduciary shall not knowingly file any document with the superior court or present testimony to the superior court which is misleading, inaccurate, false, or contains misstatements, misrepresentations or omissions of material facts. The fiduciary shall inform the superior court within ten days of the change in location or death of a client or ward.
 - g. The fiduciary shall only prepare powers of attorney or other legal documents, if also certified as a legal document preparer pursuant to ACJA § 7-208, except as ordered by the court. This provision does not apply to the Arizona Department of Veterans Services pursuant to A.R.S. § 41-603(A).
 - h. The fiduciary shall, if serving in the capacity of any type of a power of attorney, trustee, or legal custodian for the federal veterans' services division, disclose to the public, ward or client their supreme court certification does not pertain to these functions.
 3. Guardianship. The fiduciary acting as guardian shall assume legal custody of the ward and shall ensure the ward resides in the least restrictive environment available. The fiduciary or the fiduciary's qualified representative, if the ward is located outside the county or state, shall visit the ward no less than quarterly and

as often as is necessary to ensure the client's well-being. The fiduciary shall assume responsibility to provide informed consent on behalf of the ward for the provision of care, treatment and services and shall ensure this care, treatment and services represent the least restrictive form of intervention available.

- a. On appointment, the fiduciary shall take steps to become informed of the statutory requirements for a guardian.
- b. The fiduciary shall keep informed and aware of the options and alternatives available for establishing the ward's place of residence.
- c. The fiduciary shall make decisions in conformity with the preferences of the ward in establishing the residence of the ward unless the fiduciary is reasonably certain this decision will result in substantial harm.
- d. The fiduciary shall, when it is not possible to determine the preferences of the ward or where they will result in substantial harm, make decisions with respect to the place of abode of the ward that are in conformity with the best interests of the ward.
- e. The fiduciary shall not remove the ward from the home of the ward or separate the ward from family and friends unless this removal is necessary to prevent substantial harm. The fiduciary shall make every reasonable effort to ensure the ward resides at home or in a community setting.
- f. The fiduciary shall seek professional evaluations and assessments whenever necessary to determine if the current or proposed placement of the ward represents the least restrictive environment available to the ward. The fiduciary shall work cooperatively with available community based organizations to assist in ensuring the ward resides in a non-institutional environment.
- g. The fiduciary shall monitor the placement of the ward on an on-going basis to ensure the continued appropriateness of the placement and shall consent to changes as they become necessary or advantageous for the ward.
- h. The fiduciary shall, if the only available placement is not the most appropriate and least restrictive, advocate for the rights of the ward, negotiate a more desirable placement with a minimum of delay and retain legal counsel for assistance if necessary.
- i. The fiduciary shall make decisions in conformity with the preferences of the ward when providing consent for the provision of care, treatment and services, unless the fiduciary is reasonably certain these decisions will result in substantial harm to the ward.
- j. The fiduciary, when it is not possible to determine the preferences of the ward or they will result in substantial harm, shall make decisions with respect to care, treatment and services, in conformity with the best interests of the ward.

- k. The fiduciary, in the event the only available treatment, care or services are not the most appropriate and least restrictive, shall advocate for the right of the ward to a more desirable form of treatment, care or services, retaining legal counsel to assist if necessary.
 - l. The fiduciary shall seek professional evaluations and assessments whenever necessary to determine whether the current or proposed care, treatment and services represent the least restrictive form of intervention available.
 - m. The fiduciary shall work cooperatively with available individuals and organizations to assist in ensuring the ward receives care, treatment and services representing the least restrictive form of intervention available and are consistent with the wishes or best interests of the ward.
 - n. The fiduciary shall not consent to extraordinary medical procedures without prior authorization from the superior court. The procedures the fiduciary shall not consent to without prior court approval include abortion, sterilization, organ transplants, psycho surgery, electro-convulsive therapy, medical treatment for clients whose religious beliefs prohibit these treatments and any other treatments or interventions the court shall approve pursuant to state law.
 - o. The fiduciary shall keep abreast of the laws of the state regarding the withholding or withdrawal of life-sustaining treatment.
 - p. The fiduciary shall monitor the care, treatment and services the ward is receiving to ensure their continued appropriateness and shall consent to changes as they become necessary or advantageous to the ward.
 - q. The fiduciary shall ensure the ward is receiving all medical and financial benefits to which the ward may be entitled.
 - r. The fiduciary shall protect and manage the monetary interests of the ward when acting in a *de facto* conservatorship, including no co-mingling of funds and assets.
4. Conservatorship. The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise intelligence, prudence and diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.
- a. On appointment, the fiduciary shall take steps to become informed of the statutory requirements for managing a protected person's estate.
 - b. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the protected person's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.
 - c. The fiduciary shall not co-mingle any property or assets of the protected

- person's estate with property or assets of other clients' estates the fiduciary may hold as conservator or in another capacity, nor co-mingle with the fiduciary's own property or assets.
- d. The fiduciary shall manage the income of the estate with the primary goal of providing for the needs of the protected person, and in certain cases, the needs of the dependents of the protected person for support and maintenance.
 - e. The fiduciary shall exercise prudence in the investment of surplus funds of the estate.
 - f. The fiduciary shall petition for and receive authority from the superior court, prior to expending estate funds for gifting.
 - g. The fiduciary shall have no self-interest in the management of the estate and shall exercise caution to avoid even the appearance of self-interest.
 - h. The fiduciary shall ensure the protected person is receiving all medical and financial benefits to which the protected person may be entitled.
 - i. The fiduciary shall ensure all fees and expenses incurred for the protected person by the fiduciary, including compensation for the services of the fiduciary are reasonable in amount and necessarily incurred for the welfare of the protected person.
 - j. The fiduciary shall prepare complete, accurate and understandable accountings and inventories.
 - k. The fiduciary shall protect the rights and make decisions in the best interest of the protected person when acting in a *de facto* guardianship.
5. Personal Representative. A fiduciary acting as personal representative shall settle and distribute the estate of the decedent efficiently, timely and in the best interests of the estate and, if appropriate, in accordance with the terms of any probated and effective will.
- a. On appointment, the fiduciary shall take steps to become informed of the statutory requirements for managing a decedent's estate.
 - b. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the decedent's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.
 - c. The fiduciary shall not co-mingle any property or assets of the decedent's estate with property or assets of other estates the fiduciary may hold as personal representative, nor co-mingle with the fiduciary's own property or assets.

- d. A fiduciary shall exercise intelligence, prudence and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties of accounting applicable to trustees.
 - e. A fiduciary shall resolve questions in good faith and make decisions that are most beneficial to the estate.
 - f. A fiduciary shall have no self-interest in the management of the decedent's estate and shall exercise caution to avoid even the appearance of self-interest.
 - g. A fiduciary shall ensure all fees and expenses for the estate, including compensation for the fiduciary, are reasonable in amount and necessarily incurred in the administration of the decedent's estate.
 - h. A fiduciary acting as personal representative shall prepare complete, accurate and understandable court documents, including, but not limited to, petitions for determination of heirs, inventories, accountings and closing statements.
6. Termination. The fiduciary has an affirmative obligation to seek termination or limitation of the guardianship or conservatorship wherever indicated.
- a. The fiduciary shall diligently seek out information to provide a basis for termination or limitation of the guardianship or conservatorship.
 - b. The fiduciary, upon indication of termination or limitation of the guardianship or conservatorship order is warranted, shall promptly request court action, retaining legal counsel if necessary.
 - c. The fiduciary shall assist the ward or protected person in termination or limiting the guardianship or conservatorship and arrange for independent representation for the ward whenever necessary.
7. Compliance. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law and the administrative rules, court orders, administrative orders, ACJA § 7-201 and this section adopted by the supreme court governing the certification of fiduciaries.

ARS 13-3706. Failure to procure or exhibit a business license; classification

A. A person commits failure to procure or exhibit a business license if such person knowingly commences or transacts any business, profession or calling, for which a license is required by any law of this state, without procuring the license prescribed for transacting such business, or who upon demand of a peace officer or magistrate, refuses to exhibit such license.

B. Failure to procure or exhibit a business license is a class 2 misdemeanor.

ARS 14-1201. Definitions

In this title unless the context otherwise requires:

8. "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

ARS 14-1401. Notice; method and time of giving

A. If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given either:

1. By mailing a copy thereof at least fourteen days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known.

2. By delivering a copy thereof to the person being notified personally at least fourteen days before the time set for the hearing.

3. If the address or identity of any person is not known and cannot be ascertained with reasonable diligence, or when otherwise required under this title, by publishing at least three times prior to the date set for the hearing a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the first publication of which is to be at least fourteen days before the hearing.

B. The court for good cause shown may provide for a different method or time of giving notice for any hearing.

C. Proof of the giving of notice shall be made at or before the hearing and filed in the proceeding.

ARS 14-1403. Pleadings; when parties bound by others; notice

In formal proceedings involving trusts or estates of decedents, minors, protected persons or incapacitated persons, and in judicially supervised settlements, the following apply:

4. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

ARS 14-2101. Intestate estate; modification by will

A. Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this chapter, except as modified by the decedent's will.

B. A decedent by will may expressly exclude or limit the right of a person or class to succeed to property of the decedent that passes by intestate succession. If that person or a member of that class survives the decedent, the share of the decedent's intestate

estate to which that person or class would have succeeded passes as if that person or each member of that class had disclaimed that person's intestate share.

ARS 14-2105. Unclaimed estate; passage to state

If no one is qualified to claim the estate under this article, the intestate estate passes to the state.

ARS 14-2501. Who may make a will

A person who is eighteen years of age or older and who is of sound mind may make a will.

ARS 14-2502. Execution; witnessed wills; holographic wills

A. Except as provided in sections 14-2503, 14-2506 and 14-2513, a will shall be:

1. In writing.
2. Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.
3. Signed by at least two people, each of whom signed within a reasonable time after that person witnessed either the signing of the will as described in paragraph 2 or the testator's acknowledgment of that signature or acknowledgment of the will.

B. Intent that the document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills under section 14-2503, portions of the document that are not in the testator's handwriting.

ARS 14-2503. Holographic will

A will that does not comply with section 14-2502 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

ARS 14-2505. Witnesses; requirements

- A. A person who is generally competent to be a witness may act as a witness to a will.
- B. The signing of a will by an interested witness does not invalidate the will or any provision of it.

ARS 14-2517. Penalty clause for contest; restriction

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for that action.

ARS 14-2602. Passage of existing and after-acquired property by will

A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.

ARS 14-2901. Nonvested property interest; general power of appointment; validity; exception

A. A nonvested property interest is invalid unless at least one of the following is true:

1. At the time the interest is created it is certain to vest or to terminate not later than twenty-one years after the death of a person who is then alive.
 2. The interest either vests or terminates within ninety years after its creation.
 3. The interest is under a trust whose trustee has the expressed or implied power to sell the trust assets and at one or more times after the creation of the interest one or more persons who are living when the trust is created have an unlimited power to terminate the interest.
- B. A general power of appointment that is not presently exercisable because of a condition precedent is invalid unless either of the following is true:
1. At the time the power is created the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than twenty-one years after the death of a person who is then alive.
 2. The condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.
- C. A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:
1. At the time the power is created it is certain to be irrevocably exercised or otherwise to terminate not later than twenty-one years after the death of a person who is then alive.
 2. The power is irrevocably exercised or otherwise terminates within ninety years after its creation.
- D. In determining whether a nonvested property interest or a power of appointment is valid under subsection A, paragraph 1, subsection B, paragraph 1 or subsection C, paragraph 1, the possibility that a child will be born to a person after that person's death is disregarded.
- E. If the governing instrument's language seeks to do either of the following on the later of either the expiration of a period of time that does not exceed twenty-one years after the death of the survivor of a specific person who was alive when the trust or other property arrangement was created or the expiration of a period of time that exceeds or might exceed twenty-one years after the death of the survivor of a specific person who was alive when that trust or other property arrangement was created, that language is inoperative to the extent that it produces a period of time that exceeds twenty-one years after the death of the survivor:
1. Disallow the vesting or termination of an interest or trust beyond that time.
 2. Postpone the vesting or termination of an interest or trust until that time.

ARS 14-3101. Devolution of estate at death; administration on deaths of husband and wife

B. If a husband and wife both die, and the administration of one of their estates is not completed prior to commencement of administration of the other, their estates may be combined in a single administration with the same personal representative, if feasible. A single application or petition may be made to obtain appointment of a personal representative and to determine testacy. If their estates devolve as if each spouse survived the other because of application of section 14-2702, and their estates are not combined, half of their community property is subject to administration in each estate and community claims will be charged ratably to each half of the community property.

ARS 14-3102. Necessity of statement or order of probate for will; exception

Except as provided in section 14-3971, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by a statement of informal probate by the registrar, or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if both:

1. No court proceeding concerning the succession or administration of the estate has occurred.
2. Either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

ARS 14-3201. Venue for first and subsequent estate proceedings; location of property

A. Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

1. In the county where the decedent had his domicile at the time of his death.
2. If the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.

B. Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 14-1303 or subsection C of this section.

C. If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

D. For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary, is located where the debtor resides, or if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

ARS 14-3403. Formal testacy proceeding; notice of hearing on petition

A. Upon commencement of a formal testacy proceeding, the clerk shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 14-1401 by the petitioner to the persons specified in this section and to any additional person who has filed a demand for notice under section 14-3204. Notice shall be given to the following persons: the surviving spouse, children and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate in another jurisdiction, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give

notice by publication one time at least fourteen days before the hearing to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matter being litigated.

B. If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

1. By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent.
2. By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent.

ARS 14-3706. Duty of personal representative; inventory and appraisalment

A. Within ninety days after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, its nature as community or separate property and the type and amount of any encumbrance that may exist with reference to any item.

B. The personal representative may file the original of the inventory with the court and send a copy of the inventory only to interested persons who request it; or, if he elects not to file the inventory with the court, he must deliver or mail a copy of the inventory to each of the heirs in an intestate estate, or to each of the devisees if a will has been probated, and to any other interested persons who request it.

14-3805. Priority of claims

A. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

1. Costs and expenses of administration.
2. Reasonable funeral expenses.
3. Debts and taxes with preference under federal law.
4. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him.
5. Debts and taxes with preference under the laws of this state.
6. All other claims.

B. No preference shall be given in the payment of any claim over any other claim of the same class and a claim due and payable shall not be entitled to a preference over claims not due.

ARS 14-3801. Notice to creditors

A. Unless notice has already been given under this section, at the time of appointment a personal representative shall publish a notice to creditors once a week for three

successive weeks in a newspaper of general circulation in the county announcing the appointment and the personal representative's address and notifying creditors of the estate to present their claims within four months after the date of the first publication of the notice or be forever barred.

B. A personal representative shall give written notice by mail or other delivery to all known creditors, notifying the creditors of the personal representative's appointment. The notice shall also notify all known creditors to present the creditor's claim within four months after the published notice, if notice is given as provided in subsection A, or within sixty days after the mailing or other delivery of the notice, whichever is later, or be forever barred. A written notice shall be the notice described in subsection A or a similar notice.

C. The personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice under this section.

ARS 14-3933. Closing estates; statement of personal representative

B. If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

ARS 14-3971. Collection of personal property by affidavit; ownership of vehicles; affidavit of succession to real property

A. At any time after the death of a decedent, any employer owing wages, salary or other compensation for personal services of the decedent shall pay to the surviving spouse of the decedent the amount owing, not in excess of five thousand dollars, on being presented an affidavit made by or on behalf of the spouse stating that the affiant is the surviving spouse of the decedent, or is authorized to act on behalf of the spouse, and that no application or petition for the appointment of a personal representative is pending or has been granted in this state or, if granted, the personal representative has been discharged or more than one year has elapsed since a closing statement has been filed.

B. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor and stating that all of the following are true:

1. Thirty days have elapsed since the death of the decedent.

2. Either:

(a) An application or petition for the appointment of a personal representative is not pending and a personal representative has not been appointed in any jurisdiction and the value of all personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed fifty thousand dollars as valued as of the date of death.

(b) The personal representative has been discharged or more than one year has elapsed since a closing statement has been filed and the value of all personal property

in the decedent's estate, wherever located, less liens and encumbrances, does not exceed fifty thousand dollars as valued as of the date of the affidavit.

3. The claiming successor is entitled to payment or delivery of the property.

C. A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors on presentation of an affidavit pursuant to subsection B of this section.

D. The motor vehicle division shall transfer title of a motor vehicle from the decedent to the successor or successors on presentation of an affidavit as provided in subsection B of this section and on payment of the necessary fees.

E. No sooner than six months after the death of a decedent, a person or persons claiming as successor or successors to the decedent's interest in real property, including any debt secured by a lien on real property, may file in the court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state then in any county in which real property of the decedent is located, an affidavit describing the real property and the interest of the decedent in that property and stating that all of the following are true and material and acknowledging that any false statement in the affidavit may subject the person or persons to penalties relating to perjury and subornation of perjury:

1. Either:

(a) An application or petition for the appointment of a personal representative is not pending and a personal representative has not been appointed in any jurisdiction and the value of all real property in the decedent's estate located in this state, less liens and encumbrances against the real property, does not exceed seventy-five thousand dollars as valued at the date of death. The value of the decedent's interest in that real property shall be determined from the full cash value of the property as shown on the assessment rolls for the year in which the decedent died, except that in the case of a debt secured by a lien on real property the value shall be determined by the unpaid principal balance due on the debt as of the date of death.

(b) The personal representative has been discharged or more than one year has elapsed since a closing statement has been filed and the value of all real property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed seventy-five thousand dollars as valued as of the date of the affidavit. The value of the decedent's interest in that real property is determined from the full cash value of the property as shown on the assessment rolls for the year in which the affidavit is given, except that if a debt is secured by a lien on real property, the value is determined by the unpaid principal balance due on the debt as of the date of the affidavit.

2. Six months have elapsed since the death of the decedent as shown in a certified copy of the decedent's death certificate attached to the affidavit.

3. Funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been paid.

4. The person or persons signing the affidavit are entitled to the real property by reason of the allowance in lieu of homestead, exempt property or family allowance, by intestate succession as the sole heir or heirs, or by devise under a valid last will of the decedent, the original of which is attached to the affidavit or has been probated.

5. No other person has a right to the interest of the decedent in the described property.

6. No federal or Arizona estate tax is due on the decedent's estate.

F. The normal filing fee shall be charged for the filing of an affidavit under subsection E of this section unless waived by the court as provided by section 12-301 or 12-302. On receipt of the affidavit and after determining that the affidavit is complete, the registrar shall cause to be issued a certified copy of the affidavit without attachments, and the copy shall be recorded in the office of the recorder in the county where the real property is located.

G. This section does not limit the rights of heirs and devisees under section 14-3901.

ARS 14-5303. Procedure for court appointment of a guardian of an alleged incapacitated person

A. The alleged incapacitated person or any person interested in that person's affairs or welfare may petition for the appointment of a guardian or for any other appropriate protective order.

B. The petition shall state, to the extent known:

1. The interest of the petitioner.

2. The name, age, residence and address of the alleged incapacitated person.

3. The name, address and priority for appointment of the person whose appointment is sought.

4. The name and address of the conservator, if any, of the alleged incapacitated person.

5. The name and address of the nearest relative of the alleged incapacitated person known to the petitioner.

6. A general statement of the property of the alleged incapacitated person, with an estimate of its value and including any compensation, insurance, pension or allowance to which the person is entitled.

7. The reason why appointment of a guardian or any other protective order is necessary.

8. The type of guardianship requested. If a general guardianship is requested, the petition must state that other alternatives have been explored and why a limited guardianship is not appropriate. If a limited guardianship is requested, the petition also must state what specific powers are requested.

C. On the filing of a petition, the court shall set a hearing date on the issues of incapacity. Unless the alleged incapacitated person is represented by independent counsel, the court shall appoint an attorney to represent that person in the proceeding. The alleged incapacitated person shall be interviewed by an investigator appointed by the court and shall be examined by a physician, psychologist or registered nurse appointed by the court. The investigator and the person conducting the examination shall submit their reports in writing to the court. In addition to information required under subsection D of this section, the court may direct that either report include other information the court deems appropriate. The investigator also shall interview the person seeking appointment as guardian, visit the present place of abode of the alleged incapacitated person and the place where it is proposed that the person will be detained or reside if the requested appointment is made and submit a report in writing to the court. The alleged incapacitated person is entitled to be present at the hearing and to see or hear all evidence bearing on that person's condition. The alleged incapacitated person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed examiner and investigator, and to trial by jury.

The court may determine the issue at a closed hearing if the alleged incapacitated person or that person's counsel so requests.

D. A report filed pursuant to this section by a physician, psychologist or registered nurse acting within that person's scope of practice shall include the following information:

1. A specific description of the physical, psychiatric or psychological diagnosis of the person.
2. A comprehensive assessment listing any functional impairments of the alleged incapacitated person and an explanation of how and to what extent these functional impairments may prevent that person from receiving or evaluating information in making decisions or in communicating informed decisions regarding that person.
3. An analysis of the tasks of daily living the alleged incapacitated person is capable of performing without direction or with minimal direction.
4. A list of all medications the alleged incapacitated person is receiving, the dosage of the medications and a description of the effects each medication has on the person's behavior to the best of the declarant's knowledge.
5. A prognosis for improvement in the alleged incapacitated person's condition and a recommendation for the most appropriate rehabilitation plan or care plan.
6. Other information the physician, psychologist or registered nurse deems appropriate.

ARS 14-5304. Findings; order of appointment; limitations; filing

A. In exercising its appointment authority pursuant to this chapter, the court shall encourage the development of maximum self-reliance and independence of the incapacitated person.

B. The court may appoint a general or limited guardian as requested if it is satisfied by clear and convincing evidence that:

1. The person for whom a guardian is sought is incapacitated.
2. The appointment is necessary to provide for the demonstrated needs of the incapacitated person.
3. The person's needs cannot be met by less restrictive means, including the use of appropriate technological assistance.

C. In conformity with the evidence regarding the extent of the ward's incapacity, the court may appoint a limited guardian and specify time limits on the guardianship and limitations on the guardian's powers.

D. The guardian shall file an acceptance of appointment with the appointing court.

ARS 14-5307. Removal or resignation of guardian; termination of incapacity

A. On petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if it is in the best interests of the ward. On petition of the guardian, the court may accept a resignation and make any other order which may be appropriate.

ARS 14-5309. Notices in guardianship proceedings

A. In a proceeding for the appointment or removal of a guardian of a ward or an alleged incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of a hearing shall be given to each of the following:

1. The ward or the alleged incapacitated person and that person's spouse, parents and adult children.
2. Any person who is serving as guardian or conservator or who has the care and custody of the ward or the alleged incapacitated person.
3. In case no other person is notified under paragraph 1 of this subsection, at least one of that person's closest adult relatives, if any can be found.
4. Any person who has filed a demand for notice.

B. At least fourteen days before the hearing notice shall be served personally on the ward or the alleged incapacitated person, and that person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the ward or the alleged incapacitated person shall be given as provided in section 14-1401. Waiver of notice by the ward or the alleged incapacitated person is not effective unless that person attends the hearing.

ARS 14-5310.01. Adult protective services workers; special visitation warrants

A. Adult protective services workers of the department of economic security charged with responsibilities involving protection of incapacitated and abused, exploited or neglected adults may present themselves before the court to apply for and obtain special visitation warrants. The court shall limit such visitations to the residence of the adult believed to be incapacitated and abused, exploited or neglected. Nothing in this act shall be construed to mean that an adult is abused or neglected or in need of protective services for the sole reason that he relies on treatment from a recognized religious method of healing in lieu of medical treatment.

ARS 14-5311. Who may be guardian; priorities

A. Any qualified person may be appointed guardian of an incapacitated person, subject to the requirements of section 14-5106.

B. The court may consider the following persons for appointment as guardian in the following order:

1. A guardian or conservator of the person or a fiduciary appointed or recognized by the appropriate court of any jurisdiction in which the incapacitated person resides.
2. An individual or corporation nominated by the incapacitated person if the person has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.
3. The person nominated in the incapacitated person's most recent durable power of attorney.
4. The spouse of the incapacitated person.
5. An adult child of the incapacitated person.
6. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.
7. Any relative of the incapacitated person with whom the incapacitated person has resided for more than six months before the filing of the petition.
8. The nominee of a person who is caring for or paying benefits to the incapacitated person.
9. If the incapacitated person is a veteran, the spouse of a veteran or the minor child of a veteran, the department of veterans' services.
10. A fiduciary, guardian or conservator.

C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 may nominate in writing a person to serve in that person's place. With respect to persons who have equal priority, the court shall select the one the court determines is best qualified to serve.

D. For good cause the court may pass over a person who has priority and appoint a person who has a lower priority or no priority.

ARS 14-5312. General powers and duties of guardian

A. A guardian of an incapacitated person has the same powers, rights and duties respecting the guardian's ward that a parent has respecting the parent's unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the guardianship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

1. To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without this state.

2. If entitled to custody of the ward the guardian shall make provision for the care, comfort and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

3. A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service.

4. If no conservator for the estate of the ward has been appointed, the guardian may:

(a) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such person's duty.

(b) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward, but the guardian may not use funds from his ward's estate for room and board the guardian or the guardian's spouse, parent or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

5. A guardian is required to report the condition of the ward and of the estate that has been subject to the guardian's possession or control, as required by the court or court rule.

6. If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care and education of the ward shall be paid to the conservator for management as provided in this chapter and the guardian must account to the conservator for funds expended.

7. If appropriate, a guardian shall encourage the ward to develop maximum self-reliance and independence and shall actively work toward limiting or terminating the guardianship and seeking alternatives to guardianship.

8. A guardian shall find the most appropriate and least restrictive setting for the ward consistent with the ward's needs, capabilities and financial ability.

9. A guardian shall make reasonable efforts to secure appropriate medical and psychological care and social services for the ward.

10. A guardian shall make reasonable efforts to secure appropriate training, education and social and vocational opportunities for his ward in order to maximize the ward's potential for independence.

11. In making decisions concerning his ward, a guardian shall take into consideration the ward's values and wishes.

12. The guardian is authorized to act pursuant to title 36, chapter 32.

13. The guardian of an incapacitated adult who has a developmental disability as defined in section 36-551 shall seek services that are in the best interest of the ward, taking into consideration:

(a) The ward's age.

(b) The degree or type of developmental disability.

(c) The presence of other handicapping conditions.

(d) The guardian's ability to provide the maximum opportunity to develop the ward's maximum potential, to provide a minimally structured residential program and environment for the ward and to provide a safe, secure, and dependable residential and program environment.

(e) The particular desires of the individual.

B. Any guardian of a ward for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

ARS 14-5312.01. Inpatient treatment; rights and duties of ward and guardian

A. Except as provided in subsection B of this section, a guardian of an incapacitated person may consent to psychiatric and psychological care and treatment, including the administration of psychotropic medications, if the care and treatment take place outside a level one behavioral health facility licensed by the department of health services.

B. On clear and convincing evidence that the ward is incapacitated as a result of a mental disorder as defined in section 36-501, and is currently in need of inpatient mental health care and treatment, the court may authorize a guardian appointed pursuant to this title to give consent for the ward to receive inpatient mental health care and treatment, including placement in a level one behavioral health facility licensed by the department of health services and medical, psychiatric and psychological treatment associated with that placement. The evidence shall be supported by the opinion of a mental health expert who is either a physician licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1.

C. In making its decision to grant authority to a guardian pursuant to subsection B of this section, the court shall consider the cause of the ward's disability and the ward's foreseeable clinical needs. The court shall limit the guardian's authority to what is reasonably necessary to obtain the care required for the ward in the least restrictive

treatment alternative. The court may limit the duration of the guardian's authority to consent to inpatient mental health care and treatment and include other orders the court determines necessary to protect the ward's best interests.

D. Within forty-eight hours after placement of the ward pursuant to this section, the guardian shall give notice of this action to the ward's attorney. When the attorney receives this notice the attorney shall assess the appropriateness of the placement pursuant to section 36-537, subsection B and section 36-546, subsection H. If requested by the attorney, the court shall hold a hearing on the appropriateness of the placement within three days after receiving that request.

E. The behavioral health treatment facility shall assess the appropriateness of the ward's placement every thirty days and shall provide a copy of the assessment report to the ward's attorney. The ward's attorney may attend the ward's evaluation, staffing, treatment team and case management meetings.

F. When the ward is admitted to a level one behavioral health treatment facility pursuant to this section, the guardian shall provide the facility with the name, address and telephone number of the ward's attorney. The facility shall include this information in the ward's treatment record.

G. Within twenty-four hours after the facility receives any writing in which the ward requests release from the facility, any change in placement or a change in the type or duration of treatment, the facility shall forward this information to the ward's attorney.

H. All health care providers, treatment facilities and regional behavioral health authorities shall allow the ward's attorney access to all of the ward's medical, psychiatric, psychological and other treatment records.

I. The ward's guardian shall place the ward in a least restrictive treatment alternative within ten days after the guardian is notified by the medical director of the inpatient facility that the ward no longer needs inpatient care. The ward, a representative of the inpatient treatment facility, the ward's attorney, the ward's physician or any other interested person may petition the court to order the facility to discharge the ward to a least restrictive treatment alternative if the guardian does not act promptly to do so.

J. If the ward is in a behavioral health treatment facility at the time of the initial hearing on the petition for appointment of a guardian, the court investigator and the ward's attorney shall advise the court of the appropriateness of the placement.

K. An attorney appointed pursuant to section 14-5303, subsection C remains the attorney of record until the attorney is discharged by the court. The court shall ensure that a ward whose guardian has been granted mental health treatment authority is represented by an attorney at all times the guardian has that authority. Unless the court finds that the ward has insufficient assets to meet the ward's reasonable and necessary care and living expenses, the ward shall pay the attorney's reasonable fees.

L. If deemed necessary to adequately assess a request for mental health treatment authority or to review the ward's placement in a behavioral health treatment facility, the court may order an independent evaluation by either a physician who is licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1. If the ward has insufficient funds to pay the total cost of this evaluation, the court may deem all or any part of the evaluator's fee to be a county expense after determining the reasonableness of that fee.

M. Instead of ordering an independent evaluation pursuant to subsection L of this section, the court may accept a report conducted on behalf of the behavioral health treatment facility if the court finds that the report meets the requirements of an independent evaluation.

N. The court may decide that the ward's right to retain or obtain a driver license and any other civil right that may be suspended by operation of law is not affected by the appointment of a guardian.

O. If the court grants the guardian the authority to consent to inpatient mental health care and treatment pursuant to this section, the medical director of a level one behavioral health facility licensed by the department of health services may admit the ward at the guardian's request.

P. A guardian who is authorized by the court to consent to inpatient mental health care and treatment pursuant to this section shall file with the annual report of the guardian required pursuant to section 14-5315 an evaluation report by a physician or a psychologist who meets the requirements of subsection B of this section. The evaluation report shall indicate if the ward currently needs inpatient mental health care and treatment. If the guardian does not file the evaluation report or if the report indicates that the ward does not need inpatient mental health care and treatment, the guardian's authority to consent to this treatment ceases. If the report indicates that the ward currently needs this treatment, the guardian's authority to consent to this treatment continues. If the report supports the continuation of the guardian's authority to consent to this treatment, the ward's attorney shall review the report with the ward. The ward may contest the continuation of the guardian's authority by filing a request for a court hearing within ten business days after the report is filed. The court shall hold this hearing within thirty calendar days after it receives the request. The guardian's authority continues pending the court's ruling on the issue. At the hearing the guardian has the burden of proving by clear and convincing evidence that the ward is currently in need of inpatient mental health care and treatment.

Q. The court may discharge an attorney who was appointed pursuant to section 14-5303, subsection C subsequent to the appointment of a guardian if it clearly appears from specific facts presented by affidavit or verified petition that continued representation of the ward is no longer necessary or desirable. The factual basis must include, at a minimum, consideration of the following:

1. The nature and history of the ward's illness.
2. The ward's history of hospitalization.
3. The ward's current and anticipated living arrangements.
4. Whether the ward's inpatient treatment is anticipated to be a one-time hospitalization for the purpose of stabilizing the ward's condition and further hospitalizations are not likely to be necessary.
5. Whether the ward's current and anticipated living arrangements are the least restrictive alternatives possible.

ARS 14-5315. Guardian reports; contents

A. A guardian shall submit a written report to the court on each anniversary date of qualification as guardian, on resignation or removal as guardian and on termination of the ward's disability.

B. The guardian shall mail a copy of the report to:

1. The ward.
2. The ward's conservator.
3. The ward's spouse or the ward's parents if the ward is not married.
4. A court appointed attorney for the ward.
5. Any other interested person who has filed a demand for notice with the court.

C. The report shall include the following:

1. The type, name and address of the home or facility where the ward lives and the name of the person in charge of the home.
2. The number of times the guardian has seen the ward in the last twelve months.
3. The date the guardian last saw the ward.
4. The name and address of the ward's physician.
5. The date the ward was last seen by a physician.
6. A copy of the ward's physician's report to the guardian or, if none exists, a summary of the physician's observations on the ward's physical and mental condition.
7. Major changes in the ward's physical or mental condition observed by the guardian in the last year.
8. The guardian's opinion as to whether the guardianship should be continued.
9. A summary of the services provided to the ward by a governmental agency and the name of the individual responsible for the ward's affairs with that agency.

ARS 14-5401. Protective proceedings

Upon petition and after notice and a hearing in accordance with the provisions of this article, the court may appoint a conservator or make another protective order for cause as follows:

1. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided or has or may have affairs which may be jeopardized or prevented by his minority or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.
2. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines both of the following:
 - (a) The person is unable to manage the person's estate and affairs effectively for reasons such as mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance.
 - (b) The person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds.

ARS 14-5403. Venue

Venue for proceedings under this article is:

1. In the county in this state where the person to be protected resides whether or not a guardian has been appointed in another place.

2. If the person to be protected does not reside in this state, in any county where he has property.

ARS 14-5405. Notice in conservatorship proceedings

B. At least fourteen days before the hearing notice shall be served personally on the protected person or the person allegedly in need of protection and that person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the protected person or the person allegedly in need of protection shall be given in accordance with section 14-1401. Waiver of notice by the protected person or the person allegedly in need of protection is not effective unless the protected person or the person allegedly in need of protection attends the hearing.

ARS 14-5408. Permissible court orders

A. The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

1. While a petition for appointment of a conservator or any other protective order is pending and after a preliminary hearing and without notice to others, the court has power to preserve and apply the estate of the person allegedly in need of protection as may be required for that person's benefit or the benefit of that person's dependents.

2. After a hearing and upon determining that a basis for an appointment or any other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family and members of the minor's household.

3. After a hearing and upon determining that a basis for an appointment or any other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the protected person and members of that person's household, all the powers over his estate and affairs which the protected person could exercise if present and not under disability, except the power to make a will or to make gifts other than those authorized by this section.

4. After notice and a hearing the court may authorize the conservator to make gifts on behalf of the protected person out of the estate of the protected person to donees and in amounts that are consistent with the protected person's best interests and intentions. In determining if these gifts are in the protected person's best interests the court shall consider:

(a) The protected person's estate plan, if any.

(b) The protected person's pattern of prior gifts, if any.

(c) The potential tax savings that would result if a gift were authorized.

(d) The size of the estate.

(e) The protected person's income and expenses.

(f) The physical and mental condition and life expectancy of the protected person.

(g) The likelihood that the protected person's disability may cease.

(h) The likelihood that the protected person would make the gift if the person were able to consent.

(i) The ability of the protected person to consent to the proposed gifts.

B. An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists has no effect on the capacity of the protected person.

C. To encourage the self-reliance and independence of a protected person, the court may grant the protected person the ability to handle part of the protected person's money or other property without the consent or supervision of the conservator. This may include allowing the protected person to maintain appropriate accounts in any bank or other financial institution.

ARS 14-5410. Who may be appointed conservator; priorities

A. The court may appoint an individual or a corporation, with general power to serve as trustee, as conservator of the estate of a protected person subject to the requirements of section 14-5106. The following are entitled to consideration for appointment in the order listed:

1. A conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides.
2. An individual or corporation nominated by the protected person if the protected person is at least fourteen years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.
3. The person nominated in the protected person's most recent durable power of attorney.
4. The spouse of the protected person.
5. An adult child of the protected person.
6. A parent of the protected person, or a person nominated by the will of a deceased parent.
7. Any relative of the protected person with whom the protected person has resided for more than six months before the filing of the petition.
8. The nominee of a person who is caring for or paying benefits to the protected person.
9. If the protected person is a veteran, the spouse of a veteran or the minor child of a veteran, the department of veterans' services.
10. A fiduciary, guardian or conservator.

B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this section may nominate in writing a person to serve in that person's place. With respect to persons having equal priority, the court shall select the one it determines is best qualified to serve. The court, for good cause, may pass over a person having priority and appoint a person having a lower priority or no priority.

ARS 14-5414. Compensation and expenses

A. If not otherwise compensated for services rendered, any investigator, accountant, lawyer, physician, conservator or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate. If the court pays for any of these services it may charge the estate for reasonable compensation. The clerk shall deposit monies it collects in the probate fund pursuant to section 14-5433.

B. Compensation payable to the department of veterans' services, when acting as a conservator of the estate of a veteran or a veteran's surviving spouse or minor child or the incapacitated spouse of a protected veteran, shall not be more than five per cent of

the amount of monies received during the period covered by the conservatorship. A copy of the petition and notice of hearing shall be given to the proper officer of the veterans administration in the manner provided in the case of any hearing on a guardian's account or any other pleading. No commission or compensation shall be allowed on the monies or other assets received from a prior conservator nor upon the amount received from liquidation of loans or other investments.

ARS 14-5418. Inventory and records

A. Within ninety days after appointment, a conservator shall prepare and file with the court an inventory of the estate owned by the protected person on the date of the conservator's appointment, listing it with reasonable detail and indicating the fair market value as of the date of appointment of each item listed.

B. The conservator shall provide a copy of the inventory to the protected person if the protected person can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of the conservator's administration and exhibit the records on request of any interested person.

ARS 14-5419. Accounts

A. Every conservator must account to the court for the administration of the estate not less than annually on the anniversary date of qualifying as conservator and also on resignation or removal, and on termination of the protected person's minority or disability, except that for good cause shown upon the application of an interested person, the court may relieve the conservator of filing annual or other accounts by an order entered in the minutes.

B. The court may take such action as is appropriate upon filing of annual or other accounts. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify.

C. An adjudication allowing an intermediate or final account can be made only upon petition, notice and a hearing. Notice must be given to:

1. The protected person.
2. A guardian of the protected person if one has been appointed, unless the same person is serving as both guardian and conservator.
3. If no guardian has been appointed or the same person is serving as both guardian and conservator, a spouse or, if the spouse is the conservator, there be no spouse or the spouse is incapacitated, a parent or an adult child who is not serving as a conservator.
4. A guardian ad litem appointed for the protected person, if the court determines in accordance with section 14-1403 that representation of the interest of the protected person would otherwise be inadequate.

D. An order, made upon notice and a hearing, allowing an intermediate account of a conservator, adjudicates as to the conservator's liabilities concerning the matters considered in connection therewith. An order, made upon notice and a hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to

the protected person or the protected person's successors relating to the conservatorship.

E. In any case in which the estate consists, in whole or in part, of benefits paid by the veterans administration to the conservator or the conservator's predecessor for the benefit of the protected person, the veterans administration office which has jurisdiction over the area is entitled to a copy of any account filed under chapter 5, article 4 of this title. Each year in which an account is not filed with the court, the conservator shall, if requested, submit an account to the appropriate veterans administration office. If such an account is not submitted as requested, or if it is found unsatisfactory by the veterans administration, the court shall, upon receipt of notice thereof, require the conservator forthwith to file an account with the court.

ARS 14-5421. Recording of conservator's letters

Letters of conservatorship are evidence of transfer of all assets, or in the case of a limited conservatorship, the part specified in the letters, of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets subject to the conservatorship from the conservator to the protected person, or the person's successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships shall be filed or recorded in the county where the property of the protected person is located to give record notice of title as between the conservator and the protected person.

ARS 14-5424. Powers of conservator in administration

A. Subject to the limitations provided in section 14-5425, a conservator has all the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 14-5209 until the minor attains the age of majority or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by article 2 of this chapter.

B. A conservator, without court authorization or confirmation, may invest and reinvest funds of the estate as would a trustee.

C. A conservator, acting reasonably in efforts to accomplish the purpose of the appointment, may act without court authorization or confirmation to:

1. Collect, hold and retain assets of the estate including land in another state, until, in the conservator's judgment, disposition of the assets should be made. Assets may be retained even though they include an asset in which the conservator is personally interested.
2. Receive additions to the estate.
3. Continue or participate in the operation of any business or other enterprise.
4. Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest.
5. Invest and reinvest estate assets in accordance with subsection B of this section.
6. Deposit estate funds in a state or federally insured financial institution including one operated by the conservator.

7. Acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of or abandon an estate asset.
8. Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements and raze existing or erect new party walls or buildings.
9. Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange, partition by giving or receiving considerations and dedicate easements to public use without consideration.
10. Enter for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term within or extending beyond the term of the conservatorship.
11. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.
12. Grant an option involving disposition of an estate asset, or take an option for the acquisition of any asset.
13. Vote a security, in person or by general or limited proxy.
14. Pay calls, assessments and any other sums chargeable or accruing against or on account of securities.
15. Sell or exercise stock subscription or conversion rights and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.
16. Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held.
17. Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons.
18. Borrow money to be repaid from estate assets or otherwise, advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made.
19. Pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible except that personal injury or wrongful death claims shall be compromised pursuant to subsection D of this section.
20. Pay taxes, assessments, compensation of the conservator and other expenses incurred in the collection, care, administration and protection of the estate.
21. Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence or amortization, or for depletion in mineral or timber properties.
22. Pay any sum distributable to a protected person or dependent of the protected person, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the guardian of the distributee or, if none, to a relative or other person having custody of the person.

23. Employ persons, including attorneys, auditors, investment advisors or agents, even though they are associated with the conservator, to advise or assist the conservator in the performance of administrative duties, act upon their recommendation without independent investigation and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary.

24. Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of fiduciary duties.

25. Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

D. A conservator may act with court approval to compromise a personal injury or wrongful death claim for a protected person. The conservator may act with court approval to release an alleged tortfeasor if the release is in the best interest of the protected person. If the conservator obtains an order of approval for compromise from a court of competent jurisdiction, the compromise may be in exchange for a lump sum amount or an arrangement that defers the receipt of part or all of the consideration for the compromise until after the protected person reaches majority and may involve a structured settlement or the creation of a trust on the terms that the court approves for any protected person.

ARS 14-5425. Distributive duties and powers of conservator

D. If a protected person dies, the conservator may deliver to the court for safekeeping any will of the deceased protected person which may have come into the conservator's possession or deliver the will to the personal representative named in the will. If the will is delivered to the personal representative named in the will, a copy of the will shall be filed with the court in the conservatorship proceeding. If the will is filed with the court the conservator shall inform the personal representative or a beneficiary named therein that the conservator has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment. The conservator may include in such an application a request to probate the will of the deceased protected person. On receipt of an application, the registrar, after making the findings required pursuant to section 14-3303, shall issue a written statement of informal probate and shall endorse the letters of the conservator. The registrar may also enter the will of the deceased protected person to probate. The statement of the registrar under this section shall have the effect of an order of appointment of a personal representative as provided in section 14-3308 and chapter 3, articles 6 through 10 of this title, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior re-transfer to the conservator as personal representative.

E. If a protected person dies, and on reasonable inquiry the conservator is unable to locate any person specified in section 36-831, subsection A, paragraph 1, 2 or 3 willing to assume the duty of burying the body of the decedent or making other funeral and

disposition arrangements, the conservator may make reasonable burial or other funeral arrangements, the cost of which is a charge against the estate.

ARS 14-5428. Claims against protected person; enforcement

A. A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

1. The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed.
2. The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within ninety days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

B. A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

C. If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration.

ARS 14-5501. Durable power of attorney; creation; validity

A. A durable power of attorney is a written instrument by which a principal designates another person as the principal's agent. The instrument shall contain words that demonstrate the principal's intent that the authority conferred in the durable power of attorney may be exercised:

1. If the principal is subsequently disabled or incapacitated.
2. Regardless of how much time has elapsed, unless the instrument states a definite termination time.

ARS 14-5604. Claim against estate for expenses

A. The public fiduciary has a claim for all of the following against the estate of the ward, protected person or decedent:

1. Reasonable expenses incurred in the execution of the guardianship, conservatorship or public administration.
2. Compensation for the fiduciary's services and the fiduciary's attorney that the court in which the accounts are settled deems just and reasonable.
3. An annual assessment in lieu of bond of twenty-five dollars and one-fourth of one per cent of the amount of an estate greater than ten thousand dollars. A fiduciary shall not

take this assessment from the ward's or protected person's estate if the ward or protected person is eligible for supplemental security income benefits or would be eligible for these benefits if that person were not in a public institution.

B. The public fiduciary shall pay all funds received pursuant to this section to the county treasurer for deposit in the county general fund.

ARS 14-5605. Letter testamentary or of administration not required; statement to be filed; powers and duties

A. Whenever the gross assets of an estate do not exceed in value twenty thousand dollars the public fiduciary may act without the issuance of letters testamentary or of administration by filing with the superior court a statement of administration showing the name and domicile of the decedent, the date and place of death and the name, address and relationship of each known heir or devisee. The filing of this statement has the same effect as the issuance of formal letters testamentary or of administration.

B. In the event the gross assets of an estate in which the public fiduciary commences to act pursuant to a statement of administration later are found to exceed twenty thousand dollars the public fiduciary shall apply for letters for the estate.

C. In the event the public fiduciary, acting in any estate pursuant to subsection A of this section, ascertains the names and whereabouts of persons believed to be heirs or devisees of the estate who are not shown in the statement of administration, the public fiduciary shall file a supplemental statement reflecting the new information.

D. On filing the statement of administration, the public fiduciary may:

1. Take possession of, collect, manage and secure the real and personal property of the decedent.

2. Sell the decedent's real and personal property at private or public sale, without prior court order, if monies are needed to pay expenses of administration, funeral expenses or just claims against the estate and pay these expenses in the order prescribed in section 14-3805.

3. Distribute real or personal property to the estate's personal representative if one is appointed after the statement of administration is filed.

4. Distribute real and personal property to any successor to the decedent who presents an affidavit complying with the requirements of section 14-3971.

5. Sell or abandon perishable property and other property of the decedent if necessary to preserve the estate.

6. Pursuant to section 14-5103, for the use and benefit of a minor heir or devisee who has no guardian, pay the share of an intestate estate or a devise due him if it does not exceed five thousand dollars.

7. Make necessary funeral arrangements for the decedent and pay reasonable funeral charges with estate assets.

8. Distribute allowances and exempt property pursuant to chapter 2, article 4 of this title.

9. Except as otherwise limited by this section, act in accordance with the powers of a court appointed personal representative as prescribed in section 14-3715.

E. No later than twelve months from the filing of the statement of administration, the public fiduciary shall file with the court an accounting and a proposed distribution and claim for fees if the estate is ready to be settled. If the estate is not ready to be settled the accounting shall contain a statement explaining the delay. The public fiduciary shall

file subsequent accountings and explanations on an annual basis until the estate is settled.

F. The public fiduciary shall mail a copy of the accounting, the claim for fees and a proposal for distribution to each person entitled to receive this information including heirs, devisees, known creditors and other persons who have demanded notice. Notification shall be by certified mail. Notice is not required if the public fiduciary cannot reasonably ascertain necessary names and addresses.

G. A decree settling the account and approving the distribution and claim for fees may be entered without further notice or proceedings and with the same effect as in an accounting proceeding unless an objection or claim is properly filed with the court within thirty days after the public fiduciary mails an accounting pursuant to subsection F of this section.

ARS 14-5606. Additional powers and duties of the public fiduciary

A. If the gross assets of the estate exceed twenty thousand dollars, the public fiduciary may file with the court a verified petition to preserve and protect estate property if action is needed to protect an estate but no probate proceedings have been filed and no affidavit of collection has been tendered pursuant to section 14-3971. The petition shall include the following:

1. The name and domicile of the decedent.
2. The date and the place of death.
3. The names, addresses and relationships of known heirs or devisees.
4. A declaration that the gross assets of the estate are believed to exceed twenty thousand dollars.
5. A declaration that the decedent died in the county or left real or personal property in the county or that personal property arrived in the county after the decedent's death.
6. A declaration that there is no person eligible to act as personal representative or that the personal representative named in the will has refused or neglected to act, is dead or his whereabouts are unknown or is not eligible to receive letters testamentary at the present time.
7. A declaration that immediate action is necessary to make funeral arrangements and pay reasonable funeral charges or to preserve and protect the estate.

B. The court may grant the petition and enter an order without prior notice and a hearing on a finding of good cause.

C. If the court grants the petition, the public fiduciary shall send a copy of the petition and the court order to each known heir, devisee and interested party within ten business days of entry of the order.

D. If the court grants the petition, the public fiduciary may take the following action unless otherwise limited by the court:

1. Take possession of, collect and secure the decedent's real or personal property located in the county.
2. Make necessary funeral arrangements for the decedent and pay the reasonable funeral charges.
3. Institute an inquiry as to any matter affecting the estate of the decedent.
4. Sell perishable property and other property of the decedent if the estate requires this action.

5. Defray the expenses of the fiduciary activities and the expenses incidental to the public fiduciary's application for letters from the decedent's estate.
 6. Pursuant to section 14-5103, for the use and benefit of a minor heir or devisee who has no guardian, pay the share of an intestate estate or a devise due that person if that share is less than five thousand dollars.
 7. Without prior court order, sell real or personal property with an estimated value of less than five thousand dollars if this is necessary to pay reasonable funeral expenses or to preserve and protect the assets of the estate and prevent waste.
 8. With prior court order and on reasonable notice to interested parties, sell real or personal property with an estimated net value of five thousand dollars or more if this is necessary to preserve and protect the assets of the estate and prevent waste.
- E. The public fiduciary may obtain subpoenas and subpoenas duces tecum from the court in order to conduct the inquiry under subsection D, paragraph 3 of this section. The court may hold a person in contempt if the person fails to comply with the subpoena.
- F. The expenses under subsection D, paragraph 5 of this section are a legal charge against the county if the decedent's estate is incapable of paying them.
- G. On receiving notice of the appointment of a personal representative of the estate or on receiving valid affidavits for succession to real or personal property, the public fiduciary shall immediately transfer to the personal representative or affiant the control and possession of the property. The public fiduciary may subtract any monies claimed as fiduciary fees and costs pursuant to section 14-5604. The public fiduciary shall file an accounting and claim for fees with the court and shall send copies by certified mail to the personal representative or the affiant and known heirs, devisees and interested parties. If no objections are filed with the court within thirty days of this notice, the court without further notice or hearing may approve and settle the account, approve claims by the public fiduciary against the estate and discharge the public fiduciary from further duties and liability.
- H. A person paying, delivering, transferring or issuing property or evidence of property is discharged and released to the same extent as if that person dealt with a personal representative of the decedent.
- I. The public fiduciary may begin an action to probate the decedent's estate if probate has not begun or an affidavit of succession to real and personal property is not submitted at least forty days after the public fiduciary files the petition to preserve and protect the estate.

ARS 14-5651. Fiduciaries; certification; qualifications; conduct; removal; exemption; definitions

A. Except as provided by subsection G of this section, the superior court shall not appoint a fiduciary unless that person is certified by the supreme court. The supreme court shall administer the certification program and shall adopt rules and establish and collect fees necessary for its implementation. The supreme court shall deposit, pursuant to sections 35-146 and 35-147, the monies collected pursuant to this subsection in the confidential intermediary and fiduciary fund established by section 8-135. At a minimum the rules adopted pursuant to this subsection shall include the following:

1. A code of conduct.

2. A requirement that fiduciaries post a cash deposit or surety bond with the supreme court.
 3. Minimum qualifications.
 4. Biennial renewal of certification.
- B. As a condition of appointment, the supreme court shall require each applicant for the position of fiduciary to submit a full set of fingerprints to the supreme court for the purpose of obtaining a state and federal criminal records check to determine the suitability of the applicant pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- C. An applicant for certification shall:
1. Be at least twenty-one years of age.
 2. Be a citizen of this country.
 3. Not have been convicted of a felony.
 4. Attest that the applicant has not been found civilly liable in an action that involved fraud, misrepresentation, material omission, misappropriation, theft or conversion.
 5. Attend an initial session and thereafter biennial training sessions prescribed by the supreme court on the duties of a fiduciary.
 6. Consent in the application form to the jurisdiction of the courts of this state for all actions arising under this article or article 6 of this chapter and appoint the fiduciary program coordinator as the lawful agent for the purpose of accepting service of process in any action, suit or proceeding that relates to the duties of a fiduciary. The program coordinator shall transmit by registered mail to the person's last known address the lawful service of process accepted by the program coordinator. Notwithstanding the provisions of this paragraph, service of process on a public fiduciary or the department of veterans' services shall be made pursuant to the Arizona rules of civil procedure.
- D. The superior court shall, and any person may, notify the supreme court if it appears that a fiduciary has violated a rule adopted under this section. The supreme court shall then conduct an investigation and hearing pursuant to its rules. If the supreme court determines that the fiduciary committed the violation it may revoke the fiduciary's certification or impose other sanctions, including civil penalties, and shall notify the superior court in each county of this action. The supreme court may then also require the fiduciary to forfeit a cash deposit or surety bond to the extent necessary to compensate the court for the expenses it incurred to conduct the investigation and hearing.
- E. A person who in good faith provides information or testimony regarding a fiduciary's misconduct or lack of professionalism is not subject to civil liability.
- F. Persons appointed by the chief justice to serve in an advisory capacity to the fiduciary program, staff of the fiduciary program, hearing officers and employees of the administrative office of the courts who participate in the fiduciary program are immune from civil liability for conduct in good faith that relates to their official duties.
- G. The requirements of this section do not apply to a financial institution. This exemption does not prevent the superior court from appointing a financial institution as a fiduciary. The supreme court may exempt a fiduciary from the requirements of this section for good cause.

H. This section does not grant any fiduciary or any applicant for a certificate as a fiduciary the right to a direct appeal to the supreme court.

I. The supreme court may receive and expend monies from the confidential intermediary and fiduciary fund established pursuant to section 8-135 for the purposes of performing the duties related to fiduciaries pursuant to this section.

J. For the purposes of this section:

1. "Fiduciary" means:

(a) A person who for a fee serves as a court appointed guardian or conservator for one or more persons who are unrelated to the fiduciary.

(b) A person who for a fee serves as a court appointed personal representative and who is not related to the decedent, is not nominated in a will or by a power conferred in a will and is not a devisee in the will.

(c) A public fiduciary appointed pursuant to section 14-5601.

(d) The department of veterans' services.

2. "Financial institution" means a bank that is insured by the federal deposit insurance corporation and chartered under the laws of the United States or any state, a trust company that is owned by a bank holding company that is regulated by the federal reserve board or a trust company that is chartered under the laws of the United States or this state.

ARS 14-7231. Definitions

In this article, unless the context otherwise requires:

1. "Prudent man" means a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of income or principal beneficiaries, or both, and in view of the manner in which men of ordinary prudence, diligence, discretion and judgment would act in the management of the property of others.

ARS 46-454. Duty to report abuse, neglect and exploitation of incapacitated or vulnerable adults; duty to make medical records available; violation; classification

A. A physician, hospital intern or resident, surgeon, dentist, psychologist, social worker, peace officer or other person who has responsibility for the care of an incapacitated or vulnerable adult and who has a reasonable basis to believe that abuse or neglect of the adult has occurred or that exploitation of the adult's property has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to a protective services worker. The guardian or conservator of an incapacitated or vulnerable adult shall immediately report or cause reports to be made of such reasonable basis to the superior court. All of the above reports shall be made immediately in person or by telephone and shall be followed by a written report mailed or delivered within forty-eight hours or on the next working day if the forty-eight hours expire on a weekend or holiday.

B. An attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of an incapacitated or vulnerable adult or a person who has responsibility for any other action concerning the use or preservation of the incapacitated or vulnerable adult's property and who, in the course of fulfilling that responsibility, discovers a reasonable basis to believe that exploitation of the adult's

property has occurred or that abuse or neglect of the adult has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer, to a protective services worker or to the public fiduciary of the county in which the incapacitated or vulnerable adult resides. If the public fiduciary is unable to investigate the contents of a report, the public fiduciary shall immediately forward the report to a protective services worker. If a public fiduciary investigates a report and determines that the matter is outside the scope of action of a public fiduciary, then the report shall be immediately forwarded to a protective services worker. All of the above reports shall be made immediately in person or by telephone and shall be followed by a written report mailed or delivered within forty-eight hours or on the next working day if the forty-eight hours expire on a weekend or holiday.

C. Reports pursuant to subsections A and B shall contain:

1. The names and addresses of the adult and any persons having control or custody of the adult, if known.
2. The adult's age and the nature and extent of his incapacity or vulnerability.
3. The nature and extent of the adult's injuries or physical neglect or of the exploitation of the adult's property.
4. Any other information that the person reporting believes might be helpful in establishing the cause of the adult's injuries or physical neglect or of the exploitation of the adult's property.

D. Any person other than one required to report or cause reports to be made in subsection A who has a reasonable basis to believe that abuse or neglect of an incapacitated or vulnerable adult has occurred may report the information to a peace officer or to a protective services worker.

E. A person having custody or control of medical or financial records of an incapacitated or vulnerable adult for whom a report is required or authorized under this section shall make such records, or a copy of such records, available to a peace officer or adult protective services worker investigating the incapacitated or vulnerable adult's neglect, exploitation or abuse on written request for the records signed by the peace officer or adult protective services worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.

F. If reports pursuant to this section are received by a peace officer, he shall notify the adult protective services of the department of economic security as soon as possible and make such information available to them.

G. A person required to receive reports pursuant to subsection A, B or D may take or cause to be taken photographs of the abused adult and the vicinity involved. Medical examinations including radiological examinations of the involved adult may be performed. Accounts, inventories or audits of the exploited adult's property may be performed. The person, department, agency, or court that initiates such photographs, examinations, accounts, inventories or audits shall pay the associated costs in accordance with existing statutes and rules. If any person is found to be responsible for the abuse, neglect or exploitation of an incapacitated or vulnerable adult in a criminal or civil action, the court may order the person to make restitution as the court deems appropriate.

H. If psychiatric records are requested pursuant to subsection E, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:

1. Personal information about individuals other than the patient.
2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.

I. If any portion of a psychiatric record is excised pursuant to subsection H, a court, upon application of a peace officer or adult protective services worker, may order that the entire record or any portion of such record containing information relevant to the reported abuse or neglect be made available to the peace officer or adult protective services worker investigating the abuse or neglect.

J. A person who violates any provision of this section is guilty of a class 1 misdemeanor.

K. A licensing agency shall not find that a reported incidence of abuse at a care facility by itself is sufficient grounds to permit the agency to close the facility or to find that all residents are in imminent danger.

ARS 46-455. Permitting life or health of an incapacitated or vulnerable adult to be endangered by neglect; violation; classification; civil remedy; definition

B. An incapacitated or vulnerable adult whose life or health is being or has been endangered or injured by neglect, abuse or exploitation may file an action in superior court against any person or enterprise that has been employed to provide care, that has assumed a legal duty to provide care or that has been appointed by a court to provide care to such incapacitated or vulnerable adult for having caused or permitted such conduct. A physician licensed pursuant to title 32, chapter 13 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered nurse practitioner licensed pursuant to title 32, chapter 15 or a physician assistant licensed pursuant to title 32, chapter 25, while providing services within the scope of that person's licensure, is not subject to civil liability for damages under this section unless either:

1. At the time of the events giving rise to a cause of action under this section, the person was employed or retained by the facility or designated by the facility, with the consent of the person, to serve the function of medical director as that term is defined or used by federal or state law governing a nursing care institution, an assisted living center, an assisted living facility, an assisted living home, an adult day health care facility, a residential care institution, an adult care home, a skilled nursing facility or a nursing facility.

2. At the time of the events giving rise to a cause of action under this section, all of the following applied:

- (a) The person was a physician licensed pursuant to title 32, chapter 13 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered nurse practitioner licensed pursuant to title 32, chapter 15 or a physician assistant licensed pursuant to title 32, chapter 25.

- (b) The person was the primary provider responsible for the medical services to the patient while the patient was at one of the facilities listed in paragraph 1 of this subsection.

C. Any person who was the primary provider of medical services to the patient in the last two years before it was recommended that the patient be admitted to one of the facilities listed in subsection B, paragraph 1 of this section is exempt from civil liability for damages under this section.

...

E. The state may file an action pursuant to this section on behalf of those persons endangered or injured to prevent, restrain or remedy the conduct described in this section.

...

P. The cause of action or the right to bring a cause of action pursuant to subsection B or E of this section shall not be limited or affected by the death of the incapacitated or vulnerable adult.