AGENDA

ARIZONA JUDICIAL COUNCIL
Arizona State Courts Building
1501 West Washington, Room 119
Phoenix, AZ 85007

December 13, 2012

Amended: December 10, 2012

10:00 a.m. Welcome ..... Chief Justice Rebecca White Berch

Tab No.

Action Items:

(1) Approval of Minutes..... Chief Justice Rebecca White Berch

10:05 a.m. (2) Appointment of Strategic Planning Subcommittee ..... Chief Justice Rebecca White Berch

10:15 a.m. (3) Judicial Branch Legislative Package ..... Mr. Jerry Landau
..... Ms. Amy Love

10:35 a.m. (4) Filing Fee Adjustment..... Mr. Marcus Reinkensmeyer

11:05 a.m. (5) Advisory Committee on Supreme Court Rules 123 & 125 – Proposed Rule Petition ..... Mr. Mike Baumstark

11:30 a.m. (6) Report from the Capital Case Oversight Committee ..... Judge Ron Reinstein

12:00 p.m. Lunch

12:30 p.m. (7) Report from the Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings ..... Justice Robert Brutinel

1:00 p.m. (8) Arizona Code of Judicial Administration (ACJA) Amendments
- 6-202.01: Adult Intensive Probation EPB .. Ms. Kathy Waters
- 7-204: Private Process Server..... Ms. Anne Hunter
- 7-205: Defensive Driving ..... Ms. Anne Hunter

1:30 p.m. Call to the Public/Adjourn

Please call Lorraine Smith
Staff to the Arizona Judicial Council
with any questions concerning this Agenda
(602) 452-3301

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2012	_X_ Formal Action/Request ___ Information Only ___ Other	Approval of Minutes

FROM:

Lorraine Smith, Staff to the Arizona Judicial Council

DISCUSSION:

The minutes from the October 25, 2012 meeting of the Arizona Judicial Council are attached for your review.

RECOMMENDED COUNCIL ACTION:

Approve the minutes as written.

ARIZONA JUDICIAL COUNCIL
Arizona State Courts Building
1501 W. Washington, Suite 119
Phoenix, AZ 85007

October 25, 2012

DRAFT Meeting Minutes

Council Members Present:

Chief Justice Rebecca White Berch
Jim Bruner
David Byers
Judge Peter Cahill
Amelia Craig Cramer
Judge Norman Davis
Judge Pete Eckerstrom *(proxy for Judge Howard)*
Athia Hardt
Mike Hellon
Michael Jeanes
Judge Diane Johnsen (*proxy for Judge Winthrop)*
Emily Johnston
Gary Krcmarik
Judge David Mackey
William J. Mangold, M.D., J.D.
Judge Robert Carter Olson
Janet K. Regner
Judge Antonio Riojas, Jr.
Judge Sally Simmons
Judge Roxanne Song Ong
George Weisz
Judge David Widmaier

Council Members Absent:

Jose A. Cardenas, Esq.
Judge Rachel Torres Carrillo
Yvonne R. Hunter

Administrative Office of the Courts (AOC) Staff Present:

Alden Anderson
Mike Baumstark
Chad Campbell
Karl Heckart
Paul Julien
Jerry Landau
Jennifer Liewer
Amy Love
Alicia Moffatt
Nina Preston
Jeff Schrade
Lorraine Smith
Nancy Swetnam
Cindy Trimble
Kathy Waters
David Withey

Presenters and Guests Present:

Justice Scott Bales
Elaine Carro
Pete Dunn
Elizabeth Evans
Star Felty
John Phelps
Darren Richardson
Jodi Rogers
Richard Woods

DRAFT

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 9:30 a.m. at the State Courts Building, 1501 W. Washington, Suite 119, Phoenix, Arizona. The Chair welcomed those in attendance. She announced that the Governor selected Judge Ann A. Scott Timmer from the Court of Appeals as the new justice for the Arizona Supreme Court. The Chair noted that Judge Timmer was nominated and won the National Treat award which is awarded to people who participate in programs to improve probate processes. The Chair reported on the judicial attack on the ballot and encouraged members to ask people they know to view the Judicial Performance Review (JPR) website (www.azjudges.info), read the results, and make up their own minds when voting for judges standing for retention.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the June 18, 2012, meeting of the Arizona Judicial Council. There were none.

> **MOTION: To approve the minutes from the June 18, 2012, meeting of the Arizona Judicial Council, as presented.** The motion was seconded and passed. AJC 2012-14.

The Chair called for any omissions or corrections to the minutes from the August 6, 2012, special meeting of the Arizona Judicial Council. There were none.

> **MOTION: To approve the minutes from the August 6, 2012, special meeting of the Arizona Judicial Council, as presented.** The motion was seconded and passed. AJC 2012-15.

Approval of 2012 Meeting Dates

The Chair called for any changes to the proposed meeting dates for 2013: Thursday, March 28; Monday, June 24; Thursday, October 24; and Thursday, December 5. There were no changes.

> **MOTION: To approve the proposed meeting dates for the year 2013, as presented.** Motion was seconded and passed. AJC 2012-16.

Strategic Agenda and Other Initiatives Update

The Chair updated Council members on the following initiatives:

Uniform Bar Exam (UBE) – The first UBE was administered in July to 692 applicants and the pass rates were consistent with performance for non-UBE exams. Since then, four jurisdictions announced they will begin UBE in 2013. Currently, UBE is administered in Alabama, Arizona, Colorado, Idaho, Missouri, and North Dakota.

Evidence Based Practices (EBP) in Probation - EBP continues to make progress in the re-engineering of the adult and juvenile probation systems using evidenced-based

supervision techniques. Arizona has seen a 39 percent reduction in return offenders and a 42 percent reduction in new felonies committed by probationers.

Other long-term projects completed: Safe Communities Act Report was made and the Limited Jurisdiction Rules of Procedure were passed by the Supreme Court. Judges are currently being trained.

Juvenile Justice System Improvement Project (JJSIP) – The project is designed to reduce crime and delinquency and improve positive outcomes for juvenile offenders by using "what works" into everyday practices. Georgetown University announced the launch of the project and selected Arizona as one of the four states to participate in this new initiative.

Technology - E-filing was implemented in the appellate courts earlier this year, and as the AOC continues to digitize court documents and move forward, more tools will be developed for judges.

National Time Standards - The Council will launch a new committee to look at the National Center for State Courts National Time Standards. The committee, chaired by Justice Robert Brutinel, will look at how Arizona measures up.

Pre-Trial Release – Vice Chief Justice Bales will be working on a project regarding the use of non-monetary release options instead of a cash bond for people held in pre-trial release who cannot pay the bond. In addition, Justice Bales will serve as the Access to Justice liaison for the Court.

Probate Initiatives Update

Ms. Nancy Swetnam, Senior Special Projects Consultant for the Court Services Division of the AOC, provided an update on probate initiatives and an overview of the probate website to include forms, training materials, and fee guidelines. She reported that work is underway for a probate bench book, and training for judges is ongoing.

Guardian Review Program

Ms. Star Felty, Guardian Review Program Volunteer Coordinator for the Superior Court in Maricopa County, provided general information on the Guardian Review Program. She reported on the new website, developing community relationships, and success in recruiting for the program. Ms. Felty noted they currently have 20 active, diverse volunteers, and the program is growing, with 26 cases distributed this month. She stated that they hope to build a successful and useful program.

Automation Update

Mr. Karl Heckart, Chief Information Officer for the AOC, provided an automation update on strategic projects to include timelines, critical areas, impacts, and next steps regarding eCourt, eFiling, eAccess, and eBench (AiSmartBench), a highly configurable judge information portal.

Discussion took place regarding eAccess and charges for data. Judge Riojas asked if neighborhood associations, quasi public agencies, and non-profits were considered in terms of what they would be charged. A question was asked if the media will pay. It was noted that they pay now; although documents at the courthouse are free to look at, there is a .50 cents per page fee to print them. Mr. Michael Jeanes asked about customers needing e-certification, and if there are changes needed to statutes. AOC Legal staff will check statutes regarding the certified document issue to determine if any legislation is needed. Ms. Janet Regner asked about citizens who live far from the courthouse (extreme rural areas) and their access and costs for additional data requests. Dave Byers noted that rates and other details will need to be developed and approved. Michael Jeanes noted there is no charge for access if you are party to a case.

Judicial Branch Legislative Package

Mr. Jerry Landau, Director of Governmental Affairs, and Ms. Amy Love, Legislative Liaison, for the AOC, presented the legislative proposals for the Council's consideration. Mr. Landau reported on what is currently going on at the Legislature and the major issues coming up to include retirement, health care, and the budget. Council members were asked to vote to determine whether to include each proposal in its legislative package.

2013-01: Post Conviction Relief (Maricopa County Superior Court)

Discussion: Mr. Landau noted the proposal was supported by both the Committee on Superior Court and the Superior Court Presiding Judges. Discussion took place regarding the word designee and who is qualified to be a designee and what would be the qualifications. The Chair asked that Judge Davis work with legislative staff to provide some guidance in this area.

> **MOTION: To support 2013-01: Post Conviction Relief, as presented.**
> Motion was seconded and passed. AJC 2012-17.

2013-04: Probate Omnibus (Administrative Office of the Courts)

Discussion: Mr. Landau noted the proposal was supported by the Superior Court Presiding Judges, but legislative staff was encouraged not to spend a lot of political capital on it.

> **MOTION: To support 2013-04: Probate Omnibus, as presented.**
> Motion was seconded and passed. AJC 2012-18.

Mr. Landau noted there will be legislation from the Criminal Justice System regarding conforming changes to the criminal code. He reported that other issues on the horizon include possible legislation regarding the Sheriff determining who may carry a weapon in a county courthouse and a rewrite of justice of the peace provisions of Title 22 (clean-up, not substantive).

Elected Officials Retirement Plan (EORP)

Mr. Pete Dunn, Legal Counsel for the Arizona Judges Association (AJA) reported that leadership and staff in both the Senate and the House want to close EORP for new elected officials, including judges, and he is asking for authority for AOC Legislative staff to work with the AJA to get the best possible results.

Mr. Dunn noted that EORP is only 55% funded at this time and getting worse. He stated there will be significant changes, but believes we can preserve the benefits for existing members and try to make the ongoing system as good as possible so quality applicants continue to apply to be judges and other elected officials.

Mr. Dunn reported on the court commissioner issue. He noted that there is a conflict between existing commissioners, who do not pay into Social Security, and new commissioners, who do. Mr. Dunn noted that AJA is working with the Governor's Office and staff to reverse the decision to keep all court commissioners in EORP or a new system. He stated that existing commissioners are currently in EORP, and new commissioners are in ASRS, and the problem is that those in ASRS pay into Social Security, but those in EORP do not. He explained that Social Security does not allow some commissioners to be in their system; it must be all or none. Mr. Dunn stated AJA's goal is to continue to provide the best possible benefits for our court commissioners.

Mr. Dunn asked for the Council's support to work with AJA on these 2 issues.

> **MOTION: To work with the Arizona Judges Association on EORP and commissioner issues, as presented.** Motion was seconded and passed. AJC 2012-19.

Mr. Dunn spoke on a critical issue regarding the independence of the judiciary. He explained that a group of Maricopa County Republican precinct legislative districts are attacking judges who are standing for retention in this election. He noted they are urging a "no" vote on retaining Justice Pelander and all Appellate judges standing for retention, as all court of appeals judges were appointed by then-Governor Janet Napolitano, as well as some superior court judges. Mr. Dunn stated all these judges deserve retention, and they were recommended by JPR and received good ratings. He urged Council members to talk ethically with friends and neighbors and provide information on JPR.

Mr. Mike Hellon, Chair of JPR urged members to tell everyone they know who has any interest in preserving the judiciary to go to the JPR website www.azjdudges.info, review the information, and do their own due diligence when voting.

Call to the Public/Adjourn

The Chair made a call to the public; there was none.

A motion was made to adjourn the meeting at 11:23 a.m.

Proposed Judicial Branch Strategic Plan Timeline

Dec 2012 AJC Meeting	Establish strategic plan subcommittee of AJC
Jan-March 2013	Send notice to judicial branch committees and associations/State Bar asking them to meet and make recommendations on their strategic projects/initiatives for consideration: LJC, CIDVC, LJCAA COSC, COJET, AASCA COM, COJC, ASCC COT, COP, State Bar COVIC, PJs
April 2013	AOC Directors meet to identify and recommend possible new projects/initiatives
May 2013	Discuss potential new projects/initiatives at Supreme Court retreat
June 2013	First presentation to AJC to review and rank projects/initiatives and seek additional input from Council members
July 2013	First draft prepared
Aug 2013	Post on line first draft for comment by broader court community
Oct 2013	AJC strategic plan subcommittee review and comment
Dec 2013	Final presentation to AJC with subcommittee recommendations incorporated
Jan 2014	Prepare final draft
Mar 2014	Adoption by AJC
June 2014	Complete graphics, printing, branding

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2012	__ Formal Action/Request _x_ Information Only __ Other	Legislative Branch Update

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FROM:

Jerry Landau, Government Affairs Director
Amy Love, Legislative Liaison

DISCUSSION:

Legislative Update

RECOMMENDED COUNCIL ACTION:

None

Arizona Judicial Council
December 13, 2012
Legislative Proposals – 2013

Post- conviction relief (Maricopa County Superior Court)

In a capital post-conviction relief case the court is required to approve all reasonable attorney fees and costs for appointed counsel. Current law requires approval of attorney fees for over 200 hours of work. However, permits the court to appoint a designee to review and approve the fees and costs.
Title affected: 13

Probate omnibus (Administrative Office of the Courts)

In a guardianship or conservatorship case, permits the Superior Court to order Alternative Dispute Resolution (ADR) or arbitration prior to the appointment of a fiduciary. Current law allows ADR or arbitration only after the appointment of a fiduciary. Issues related to the capacity or vulnerability of the person are not subject to ADR or arbitration.

Removes the statutory requirement that the conservator's annual accounting be filed with the court on the anniversary of the date the person qualified as conservator. It is the intent that time periods regarding the accounting, including the initial 90 day inventory period would be established by court rule.

Permits the court to order fingerprints and background checks of proposed guardians and conservators and sets forth the necessary process.
Title affected: 14

Arizona Judicial Council
December 13, 2012
Supplemental Legislative Report

Criminal code; conforming changes (Criminal Justice System)

Expands victim rights in juvenile court cases to cover all misdemeanors and violations of a local criminal ordinance in order to comply with a Court of Appeals case. Conforms to the changes in the Title 13 victim's rights law enacted last session.

Rounds two criminal code sentencing provisions in the category one repetitive conviction subsection, Class 6 mitigated (.3 years to .25 years), Class 6 maximum (1.8 years to 2 years) and rounds one sentencing provision in the category two repetitive offender subsection, Class 3 mitigated (3.3 years to 3.25 years) in order to conform to other portions of the sentencing code wherein the sentencing ranges are in full, half or quarter years.

Moves an assessment statute from Title 13 to Title 12 so that all assessments in criminal cases are grouped together and fixes an incorrect reference.

Titles affected: 8, 12, 13 and 32

Title 22 Rewrite (Maricopa County Justice of the Peace Bench)

A rewrite of Title 22 designed o eliminate antiquated and inconsistent language, and wherever feasible to correspond statutory language to current practice. The bill is in its third draft and still being discussed by stakeholders.

Title affected: 22

Carrying of firearms by Peace Officers (Arizona Association of Counties)

While a bill draft has not been presented, the bill is expected to amend A.R.S. §38-1102 to strip the presiding judge of the authority to prohibit a peace officer from carrying a firearm into any court and granting that authority to the sheriff.

Title affected: 38

Arizona Judicial Council
December 13, 2012
Supplemental Legislative Report

Bail bond agents; list; loitering (Arizona Bail Bondsmen Association)

Establishes an additional "Loitering" offense, a bail bondsmen soliciting bail bond business in a courthouse or at or near a county jail.

Requires the clerk of the court to update the bail bond list monthly and forward it to the county and city jail.

Title affected: 13

Appearance bonds; exoneration (Arizona Bail Bondsmen Association)

Relieves a surety from liability on an appearance bond if any of the following apply:

- The surety surrenders the defendant on that appearance bond on or before the day and time the defendant is ordered to appear in court
- The defendant is not released to the custody of the surety, but is instead released or transferred to the custody of another government agency preventing the defendant from appearing in court on the day and time the defendant was ordered to appear.

The surety may be relieved from liability from the appearance bond on which the defendant is released if the surety surrenders the defendant into the custody of the sheriff of the county in which the prosecution is pending in a timely manner not to exceed ninety days after the defendant's failure to appear. The court may order the forfeiture of up to ten per cent of the appearance bond or one thousand dollars, whichever is greater. Only applies if the surety surrenders the defendant or assists local law enforcement in the apprehension of the defendant.

Notes: This is an expanded version of last year's bill on which AJC ultimately voted to remain neutral. Changes are as follows:

- The "grace period" in which to surrender the defendant is increased from 21 to 90 days (AJC was neutral on 90 days, the 21 days was negotiated between Rep. Gowan and Bill Montgomery)

- The "grace period" does not apply if the court finds that the delay in taking the defendant into custody is not timely
- The bond must be exonerated if the defendant is never released to the surety, but is instead is released or transferred to another government agency, such as ICE.

Release conditions; bond; schedule (Arizona Bail Bondsmen Association)

If the court finds that a person has a prior felony conviction within seven years, a secured appearance bond ranging from $20,000 - $1,000,000 depending on the offense is required. The court may deviate up or down based upon the current statutory criteria for determining bond.

The court may order a performance bond for electronic monitoring, drug testing and for reporting to a third party or the bail bond agent who posted the criminal performance bond.

Postconviction conditional early release bond (Arizona Bail Bondsmen Association)

Provides authority to the Director of the Department of Corrections to grant release for supervision by a bail bond agent or surety to certain inmates convicted of most Class 4, 5 or 6 Felonies after fifty percent of the sentence is served. Sets forth the eligibility requirements and the release conditions. The sponsor is considering a provision to permit the court, at sentencing to allow an inmate to be eligible for the program. However, that provision is not now in the draft bill.

12/11/12

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2012	_X_ Formal Action/Request __ Information Only __ Other	Filing Fee Adjustment

FROM:

Marcus Reinkensmeyer, Director, Court Services Division of the AOC

DISCUSSION:

In 2008, legislation was passed amending A.R.S. § 12-284 and § 22-281, authorizing the Arizona Supreme Court to increase filing fees in the superior and justice courts, specifically to keep pace with the Consumer Price Index (CPI). The approach was intended to facilitate small incremental increases in filing fees over time rather than large sweeping changes on a less frequent basis. Filing fees have not been raised since the legislation went into effect, despite a significant increase in the CPI. Additionally, projections suggest a likely reduction in revenues due to a downward trend in the volume of civil case filings and an anticipated reduction in copy fee revenues with transition to electronics documents.

RECOMMENDED COUNCIL ACTION:

Based on options that will be presented, determine whether filing fees for the superior and justice courts should be increased and, if so, to what level.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2012	_x_ Formal Action/Request __ Information Only __ Other	Advisory Committee on Supreme Court Rules 123 and 125

FROM:

Mike Baumstark, Chair, Advisory Committee on Supreme Court Rules 123 and 125

DISCUSSION:

The Advisory Committee on Supreme Court Rules 123 and 125 was established by Chief Justice Rebecca White Berch to make policy recommendations regarding Internet publication of minute entries and orders in Title 25 family law and Title 14 probate cases. Administrative Order 2012-41 directed the committee to report its recommendation to AJC at its December 2012 meeting.

The committee was created partly in response to legislation introduced last session that would have affected the identification of children in family law orders and minute entries. The committee also revisited the current provision of Rule 123 that allows four data elements -- party names, case number, judicial assignment, and attorney names -- to be posted online in probate and mental health cases. At its final meeting on October 18, the committee authorized its chair to file a rule change petition affecting Rule 123. The petition will request changes regarding family law minute entries and protective orders. The committee is not recommending any changes regarding access to probate and mental health records.

Since these issues are addressed primarily in superior court, the proposed rule change was presented to the Committee on Superior Court (COSC) for informational purposes, and no changes were recommended. The petition also includes restrictions on Internet publication of information about protective orders. Therefore, the proposal also was presented to the Committee on the Impact of Domestic Violence and the Courts (CIDVC). Again, no changes were recommended.

A draft of the petition and accompanying appendix is presented for review and comment by AJC members.

RECOMMENDED COUNCIL ACTION:

Recommend the filing of the rule petition and appendix on or before January 10, 2013.

Mike Baumstark, Chair
Advisory Committee on
Supreme Court Rules 123 and 125
Administrative Office of the Courts
1501 W. Washington, Suite 410
Phoenix, Arizona 85007
(602) 452-3305

IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of:	)	
	)	Supreme Court No. R-13-____
PETITION TO AMEND	)	
RULE 123, RULES OF THE	)	
SUPREME COURT OF ARIZONA	)	
_____	)	

PETITION TO AMEND RULES
RELATING TO ACCESS TO PUBLIC RECORDS

Pursuant to Arizona Supreme Court Rule 28, Mike Baumstark, Chair of the Advisory Committee on Supreme Court Rules 123 and 125, respectfully petitions this Court to adopt amendments to Rule 123, Rules of the Supreme Court of Arizona, as set forth in Appendix A, attached hereto. The primary purpose of the proposed amendments is to identify those minute entries and orders in family law cases that can be published online and those that can be made available only at the courthouse.

I. Background

In May 2012, at the request of the Arizona Judicial Council, the Chief Justice established, by Administrative Order 2012-41, the Advisory Committee on Supreme Court Rules 123 and 125 (hereinafter Rule 123 and Rule 125, respectively) to examine and make recommendations on whether revisions to these rules are necessary to effectuate a policy to identify those minute

entries and orders in family law and probate cases that can be published online and those that can be made available only at the courthouse. The committee consisted of representatives from the general jurisdiction court bench; clerks of court; court administrators; attorneys, including an attorney who regularly represents media clients; the State Bar, and the general public. It was chaired by Mike Baumstark, deputy administrative director, Administrative Office of the Courts.

II. Issues

To answer its charge, the committee found it necessary to address the following individual issues: a) whether family law minute entries that include protective order information could be published online; b) whether the names of minors or adults in guardianship, conservatorship, estate, trust, and mental health cases should be permitted to be published online as currently allowed by Rule 123; c) whether additional data elements or case information in guardianship, conservatorship, estate, trust, and mental health cases should be added to the four data elements currently permitted to be published online under Rule 123; d) whether minute entries in mental health cases should be added to the four data elements currently permitted to be published online under Rule 123; e) whether case records, in addition to minute entries, in guardianship, conservatorship, estate, trust, and mental health cases should be permitted to be published online, and f) certain additional clarifying revisions to Rule 123. While not specifically charged with addressing access to mental health case data, the committee found it important to discuss such access because of the similar nature of probate and mental health cases.

III. Analysis

The issues addressed by the committee do not impact the availability of case records at a courthouse. This accessibility is already governed by many statutes and rules that go well beyond Rule 123. Instead, the issues addressed by the committee are generally confined to weighing the public interest served by making case information readily available online versus

the personal privacy interest that should be protected by not posting certain case records in family law, probate, and mental health cases online. Rule 123 has long acknowledged the need to balance the competing interests of the public's right to access case records with the privacy rights of the individuals identified in those records. Specifically, Rule 123 provides, "the records in all courts . . . are *presumed* to be open. However ... public access to some court records *may be* restricted" for reasons of privacy, confidentiality, or in the state's best interests.

The question of balancing the interests of the public's right to know and individual privacy interests dominated the committee's deliberations. At the first meeting, the committee heard from a state representative who provided a real-life example of why records that are "public" at the courthouse should not be "published" online and available for all to see. The representative relayed a story of a constituent who was appalled to learn that very private details of the mental and physical health of a 13-year-old girl were published online as part of a minute entry order awarding custody in a dissolution case. It is important to understand that in a contested custody case, state law requires the court to "make specific findings on the record and the reasons for which the decision is in the best interests of the child." The committee recognized the impact that online access in this situation could have on this child's relationship with schoolmates, family, friends, and even potential future employers. This example of why certain public records should not be published online helped guide a great deal of the committee's discussion and its recommendations.

In carrying out its work, the committee reviewed state and federal statutes and court rules that govern access to court records, family law and protective orders, probate law, and mental health law. The committee also considered current practices throughout the state for preparing, publishing, and distributing minute entries and in posting party names, case number, judicial

assignment, attorney names, and dockets online in probate and mental health cases.

The attached Appendix primarily addresses the issue presented to the committee during its first meeting: family law minute entries. The existing provisions of Rule 123 are being revised to clarify those minute entries that may and may not be made available online. In summary, minute entries prepared for hearings conducted in open court may be published online; minute entries prepared for matters taken under advisement may not be published online. No revisions to Rule 125 are proposed. This clarification to Rule 123 eliminates the need for any revision to Rule 125.

After much discussion, the committee decided no changes to Rule 123 were needed regarding access to probate and mental health cases. Although some committee members raised concerns about protecting the privacy of individuals who are the subject of a guardianship or mental health case, the majority believed publishing the minimal data elements of party name, case number, judicial assignment, and attorney name, as currently permitted under Rule 123, is important to allow interested persons who are not parties to the case to monitor specific cases.

The specific recommendations of the committee are set forth more fully below.

IV. Proposed Amendments

123(g)(1)(C)(i): This proposed revision clarifies that general public, registered user access may be expanded beyond those persons who hold an Arizona driver license. It will allow access to the identified records by individuals outside of Arizona who register following protocols to be established as part of the electronic documents access project currently under way and set forth in ACJA § 1-604.

123(g)(1)(D)(i): By removing three words, this proposed revision eliminates the confusion caused by use of the term "closed," which, in Rule 123, is equivalent by definition to

the term "confidential." This proposed revision further eliminates the misstatement that suggests that juvenile delinquency, mental health, probate, and criminal cases in which a juvenile is alleged to be a victim are confidential cases. In fact, certain elements of these cases are sometimes confidential, while other elements are not.

123(g)(1)(D)(ii): This proposed revision breaks out the list of items constituting "case information" from the main rule, improving readability. In addition, it closely mirrors language in federal statute that restricts the Internet publication of certain protective order case information to safeguard the identity and location of protected persons.

123(g)(1)(D)(iii): This proposed revision separates family law minute entries and rulings, decisions, or orders – both temporary and final – from case information. It also breaks out the list of items constituting "case information" from the main rule, improving readability, and reduces the list to those items that are applicable to family law cases. Finally, it includes language from federal statute restricting Internet publication of certain information about protective order cases for the safety of the protected person.

V. Conclusion

For the foregoing reasons, the undersigned respectfully petitions this Court to amend Rule 123, Rules of the Supreme Court of Arizona as set forth in Appendix A.

RESPECTFULLY SUBMITTED this ___day of _____, 201_.

By _____
Mike Baumstark, Chair

DRAFT

APPENDIX A

Rules of the Supreme Court of Arizona
Rule 123. ~~Public~~ Access to the Judicial Records of the State of Arizona[1]

NOTE: Pending changes adopted by the Court in August 2012 are identified in **black** with strikethrough and underline and will take effect January 1, 2013.

(a) – (f) [No change]

(g) Remote Electronic Access to Case Records.

(1) A court may provide remote electronic access to case records as follows:

(A) [No change]

(B) *Governmental Entities and ~~Public Purpose~~ Private Organizations Serving a Public Purpose*. Any federal, state, tribal, or local governmental entity or ~~public purpose~~ private organization serving a public purpose may be provided remote electronic access to any case records necessary to carry out a particular governmental or public purpose responsibility. The terms of such access shall be set forth in a memorandum of understanding between the entity or organization and the custodian that includes provisions for safeguarding the confidentiality of any closed records.

(C) *General Public, Registered Users*.

(i) Members of the public ~~who hold an Arizona driver license or nonoperating identification license~~ may be provided remote electronic access~~, upon registering and paying any established fee~~ pursuant to ACJA § 1-604~~,~~ to all of the following categories of case records unless sealed or otherwise made confidential by rule or law:

(a) – (d) [No change]

(ii) The following documents shall not be accessible by remote electronic access to users registered under paragraph (g)(1)(C) due to the inability to protect sensitive data that is likely to be contained within these documents:

(a) – (g) [No change]

(h) all documents in criminal cases in which a juvenile is alleged to be the victim of any offense listed in ARS Title 13, chapters 14, 32, 35, or 35.1. The prosecuting agency, upon filing a charging document described in this paragraph, shall advise the clerk that the case is subject to this provision.

[1] Additions to text are indicated by underscoring; deletions by ~~strikethrough~~.

Upon motion by a party, by any person, or upon the court's own motion, and for good cause shown, the court in which such action is pending may issue an order to allow remote electronic access to members of the public, as provided in paragraph (g)(1)(C), to any case in which a juvenile is alleged to be the victim under paragraph (g)(1)(C)(ii)(h). The order may include any appropriate provision required to protect the juvenile from embarrassment or oppression. The burden of showing good cause for an order shall remain with the person seeking remote electronic access to the case record. Irrespective of an order limiting electronic access under this paragraph, the clerk shall provide non-registered users remote electronic access as set forth in paragraph (D)(ii) herein when the court generally provides such non-registered user access in other cases.

(D) *General Public, Non-Registered Users*. Unless otherwise provided by rule or law, members of the public may be provided remote electronic access, without registering, to:

(i) the following data elements in ~~closed cases, including~~ juvenile delinquency, mental health, probate, and criminal cases in which a juvenile is alleged to be the victim, as identified in paragraph (g)(1)(C)(ii)(h) above:

- party names,
- case number,
- judicial assignment, and
- attorney names

(ii) individual case information extracted from a case management system in all civil, criminal, and civil traffic cases identified in paragraphs (g)(1)(C)(i)(a) through (d)~~, and family law cases, including~~. Case information includes a list of documents filed, events, dates, calendars, party names, month and year of birth, residential city, state and zip code, case number, judicial assignment, attorneys, charges filed or claims made, interim rulings, and case outcomes, including sentence, fines, payment history, minute entries, and notices. Case information does not include any information regarding the registration, filing of a petition for, or issuance of an order of protection or an injunction against harassment, if such publication would be likely to reveal to the general public the identity or location of the party protected under such order.

(iii) Case information may be provided for family law matters, with minute entries limited only to those issued during hearings conducted in open court or in chambers when one or more parties or their counsel are present. For purposes of this subsection, case information includes a list of documents filed, events, dates, calendars, party names, month and year of birth, residential city, state and zip code, case number, judicial assignment, attorneys, ~~charges filed or claims made, interim rulings, and case outcomes, including sentence, fines~~, payment history, minute entries, and notices. Case information does not include any information regarding the registration, filing of a petition for, or issuance of an order of protection or an injunction against harassment, if such publication would be likely to reveal to the general

public the identity or location of the party protected under such order.

~~(iii)~~ (iv) court of appeals and supreme court opinions and decisions in all case types, except that any appendix in criminal cases in which a juvenile is alleged to be the victim, as identified in paragraph (g)(1)(c)(ii)(h) above, shall not be provided by remote electronic access.

(2) [No change]

(3) Courts and clerks of court shall not display case records online except ~~as provided herein,~~:

A. minute entries, as provided by ARS §§ 12-283(I) and (J);~~, or~~

B. case records, as ordered by the court in a particular high profile case~~.~~ that creates great public or media interest to which the court can more timely and efficiently respond by displaying records of the case online;

C. audio or video of any case, as authorized by the presiding judge of the court, the chief judge of the court of appeals, or the chief justice of the supreme court; or

D. as otherwise provided in this rule.

Any remote electronic access shall be conditioned upon the user's agreement to access the information only as instructed by the court, not to attempt any unauthorized access, and to consent to monitoring by the court of all use of the system. The court will also notify users that it will not be liable for inaccurate or untimely information, or for misinterpretation or misuse of the data. Such agreement and notices shall be provided to the users in any manner the court deems appropriate. The court may deny access to users for failure to comply with such requirements. The court or clerk of court that establishes remote electronic access to case records may also establish limitations on remote electronic access based on the needs of the court, limitations on technology and equipment, staff resources and funding.

(4) – (7) [No change]

(8) This paragraph (g) shall not limit the public's right of access to records, whether in paper or electronic format, at a court-designated facility~~, whether in paper or electronic format~~.

(h)-(j) [No change]

[2013] COURT COMMENT TO PARAGRAPH (G)(1)(d)(3)

Courts and clerks of court should clearly and prominently display a cautionary note on their document access website advising users that not all documents in a case might be posted to the website and that additional or subsequent documents or orders may be available from the court or clerk of court.

DRAFT

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2012	_X_ Formal Action/Request __ Information Only __ Other	Report from the Capital Case Oversight Committee

FROM:

Capital Case Oversight Committee
Hon. Ronald Reinstein (ret.), Chair

DISCUSSION:

This is the Capital Case Oversight Committee's fourth annual report to the Arizona Judicial Council. The capital case crisis in Maricopa County in 2007 that led to the establishment of this Committee has passed. However, the complex issues inherent in capital cases will continue as long as there is a death penalty. The Committee therefore recommends that the Court extend its term, notwithstanding the abatement of the crisis.

RECOMMENDED COUNCIL ACTION:

To approve the recommendations of the Capital Case Oversight Committee

PROGRESS REPORT

OF THE

CAPITAL CASE

OVERSIGHT COMMITTEE

TO THE

ARIZONA JUDICIAL COUNCIL

December 2012

Justice 2020

Capital Case Oversight Committee

December 2012

Chair: Hon. Ronald Reinstein, Judge of the Maricopa County Superior Court (retired)

Hon. Douglas Rayes, Presiding Criminal Judge, Maricopa County Superior Court

Bill Montgomery, Maricopa County Attorney

Kent Cattani, Chief Counsel for Capital Litigation, Arizona Attorney General

Donna Hallam, Staff Attorney, Arizona Supreme Court

Dan Levey, Executive Director, Parents of Murdered Children

Marty Lieberman, Maricopa County Legal Defender

James Logan, Director, Maricopa County Office of Public Defense Services

Daniel Patterson, Capital Unit Supervisor, Maricopa County Public Defender

Committee Staff: Mark Meltzer, Kymberly Lopez, Administrative Office of the Courts

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Recommendation #1: Support an amendment to A.R.S. § 13-4041.

Recommendation #2: Establish a process to evaluate applications for appointment on capital PCR petitions.

Recommendation #3: Encourage continuing training and education for judges, prosecutors, defense attorneys, and others who handle capital cases.

Recommendation #4: Extend the term of the Oversight Committee.

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I. Executive summary

The Capital Case Oversight Committee submitted reports to the Arizona Judicial Council at the end of 2008, 2009, and 2010. The Supreme Court deferred the 2011 report to allow the Committee additional time to study ongoing issues.

The Supreme Court established the Committee's predecessor, the Capital Case Task Force, in February 2007 because of an *"unprecedented number of capital cases then awaiting trial in Maricopa County."* The Court created the Oversight Committee in December 2007 pursuant to a Task Force recommendation that this new committee *"monitor capital caseload reduction efforts in Maricopa County."* At that time, Maricopa County was approaching one hundred-forty capital cases pending trial. This caused a severe strain of Maricopa County's resources. The Arizona Supreme Court anticipated that Maricopa County's caseload might lead to an inundation of capital appeals.

The Maricopa County Superior Court adopted a new capital case management approach in March 2009. The court's new approach included rigorously enforcing its policy concerning postponement of trial dates; conducting meaningful and productive pretrial conferences; and assuring that courtrooms and experienced judges were available for capital case trials. The number of pending capital cases has steadily decreased since that time. The Oversight Committee's 2010 report noted that seventy-nine capital cases were pending in September 2010, and since then, the number of pending capital cases in Maricopa County has continued to decline. As of the end of September 2012, there were sixty-six capital cases pending trial, which represents an extraordinary decrease in the number of Maricopa County's capital cases during the existence of this Committee.

Notwithstanding the resolution of scores of cases in the trial court, a corresponding surge in pending capital cases before the Arizona Supreme Court appears to have subsided. There were seventeen capital appeals pending in December 2008, and the number increased to twenty-seven appeals in November 2010. There were fifteen capital appeals filed in 2009 alone. However, the Court has already issued opinions in thirteen of the 2009 appeals. There are now nineteen capital cases on direct appeal, a figure comparable to the number pending in 2008.

The Oversight Committee's 2010 report also addressed the number of unrepresented defendants on petitions for post-conviction relief. In November 2009, the Committee reported there were eighteen defendants whose direct appeals had concluded and who were awaiting appointment of PCR counsel, and the Committee voiced concern that the number of unrepresented defendants would soon surpass twenty. However, by November 2010, the number had fallen to fourteen defendants. More recently, all but seven capital defendants had an attorney for a post-conviction proceeding.

Several issues discussed in the Committee's 2010 report require no further consideration; they are now moot. The remaining issues are remedial rather than critical. The capital case crisis that gave rise to this Committee's creation has passed.

Justice Michael D. Ryan was chair of the Capital Case Task Force and the Capital Case Oversight Committee until his death in January 2012. Justice Ryan provided consistent leadership during this crisis and a firm determination to solve the problems it presented. The capital case crisis was resolved under Justice Ryan's watch. The members of the Oversight Committee remember Justice Ryan and his dedicated service with heartfelt gratitude and respect.

II. Capital Cases in the Superior Court and the Supreme Court

In September 2008, the Oversight Committee began compiling capital case data from Maricopa County and, to a lesser extent, statewide data. The accumulation of years of data affords the Committee a longer perspective. Charts and tables, which appear in the appendix, summarize the data.

Superior Court, Maricopa County: The Oversight Committee offers the following observations concerning the Maricopa County data:

1. Notices of intent to seek the death penalty: A case becomes *"capital"* upon the filing under Ariz. R. Crim. P., Rule 15.1(i), of a notice of intent to seek the death penalty. Between 2004 and 2008, the number of new capital filings annually was in a range of thirty-one to forty-six cases.[1] By comparison, during successive twelve-month periods between October 2008 and September 2012, the respective numbers of new filings were eighteen, thirty-two, twenty-six, and twenty-four. Usually there were no more than two filings per month during this four-year period, although there were occasional variations; for example, in December 2009 there were seven new cases.

2. Ratio of filings to terminations: Early in the period between 2009 and 2012, the number of capital case terminations was about twice the number of new filings. The high number of terminations reflected the hard work of the superior court, prosecutors, and defense counsel to implement the new court policy and reduce the number of capital cases. Later in the four-year period, however, the ratio became closer to even; that is, there were roughly an equivalent number of case terminations and new case filings.

3. Number of pending cases: Almost without exception, the number of pending capital cases declined every month during 2009 and 2010. During calendar year 2011, however, the number stabilized between sixty-four and sixty-eight cases, and the number of pending cases has continued in about this range during calendar year 2012. This range is significant because a 2007 letter from the Maricopa County Office of Management and Budget indicated that an *"acceptable"* capital number was less than sixty-five cases.[2]

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[1] Figures for capital cases filings in the Oversight Committee's 2008 report were as follows: FY 04, 31 cases; FY 05, 32 cases; FY 06, 46 cases, and FY 07, 32 cases. The Maricopa County Superior Court statistician provided those figures. A slightly different set of figures were in an August 10, 2007 letter from Thomas K. Irvine, counsel for the Maricopa County Office of Management and Budget, to Justice Ryan as Chair of the Capital Case Task Force, as follows: FY 04, 33 cases; FY 05, 30 cases; FY 06, 41 cases; and FY 07, 32 cases. Regardless of which set of FY 04 to FY 07 figures are used, they are still generally higher than the annual numbers from October 2008 to September 2012.

[2] The letter from Mr. Irvine to Justice Ryan referred to in the preceding footnote indicated in a chart that this was an *"acceptable level"* of capital cases.

Superior Court, Statewide: The Oversight Committee's data collection also includes a survey of county attorneys statewide, other than Maricopa's, concerning their pending capital cases for each of the past four years. While the data continues to reflect modest local and annual variations, the numbers from these fourteen counties are relatively stable. However, with the inclusion of Maricopa County, the number of pending capital cases statewide has decreased substantially. The statewide number has dropped from one-hundred fifty-five cases in July 2008 to eighty-three cases in September 2012.

Supreme Court, Direct Appeals: As noted in the Committee's 2010 report, the number of pending capital cases awaiting trial has a significant impact on the resources required for the administration of those cases in the trial courts. Nonetheless, defendants historically receive a death sentence in only a fraction of the cases in which prosecutors file a death notice. This sub-set of cases, where a jury and judge have imposed a death sentence and where there is a direct, automatic appeal to the Supreme Court, has the greatest impact on the resources of the Arizona Supreme Court.

The number of death sentences has steadily decreased since 2009. There were fifteen death sentences imposed statewide during calendar year 2009. By comparison, there were ten death sentences statewide in 2010, eight in 2011, and three during the first nine months of 2012.

Supreme Court, Petitions for Post-Conviction Relief: A looming issue in the Committee's 2009 report was the number of capital defendants in whose cases the Supreme Court Clerk had filed pro forma notices for post-conviction relief, and for whom there were no available counsel for appointment. In 2009 there were eighteen defendants lacking counsel for their PCR petition. However, that number declined to fourteen in 2010, and after a further drop to one, it stood at seven in September 2012.[3]

What is most surprising about this development is that the State Capital Post-Conviction Public Defender, a state office created by the Legislature in 2007 to accept appointments on capital PCRs, no longer exists. The Legislature passed a budget (SB 1531) for fiscal year 2013, and the budget included a repeal of the statutes establishing this office.[4]

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[3] An eighth defendant, Hausner, whose conviction was affirmed on direct appeal, has requested that counsel not be appointed for a PCR proceeding. Litigation concerning his request is ongoing.

[4] The SB 1531 fact sheet dated May 2, 2012, for the bill as transmitted to the Governor stated: *"Eliminates the Capital Postconviction Public Defender Office (SCPPD) and removes the office from the recipients of funds from the Public Defender Training Fund. It also removes the mandate that the court appoint counsel from the SCPPD for those defendants whose conviction and sentence in a capital case has been affirmed."*

Maricopa County's Office of the Public Advocate absorbed the majority of the State Defender's five pending cases, as well as most of its staff. The Maricopa County Public Defender accepted Supreme Court appointments on two capital post-conviction petitions in 2011, and private attorneys accepted several new appointments on capital PCRs this year. These circumstances have allowed more capital defendants to have counsel appointed by the Court closer in time to the Clerk's filing of a post-conviction notice, but the issue of timely appointment of PCR counsel is one of continuing concern to the Oversight Committee.

There are about three dozen petitions for post-conviction relief pending in the superior court throughout Arizona. About thirty of these proceedings are in Maricopa County. As reported above, there are seven defendants whose direct appeals are final, and the number of pending PCR proceedings in Maricopa County and statewide will increase when counsel are appointed for these seven defendants. Similar to capital cases pending trial, capital PCR cases require substantial county resources, among them the cost of defense counsel, mitigation specialists, investigators, and experts.[5] The large volume of pending capital PCRs in the superior court will continue to place stress on county budgets.[6]

III. Recommendations

Recommendation #1: Support an amendment to A.R.S. § 13-4041. A.R.S. § 13-4041 concerns the fee of counsel appointed on a petition for post-conviction relief in a capital case. The statute provides for a one-hundred dollar hourly fee. The Committee recommends, as it has recommended over the past several years, that the hourly rate in A.R.S. § 13-4041 be increased

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[5] The issue of effectiveness of counsel at the PCR stage might be the subject of future litigation in light of *Martinez v Ryan,* 132 S. Ct. 1309, 182 L. Ed. 2d 272 (March 20, 2012.) The Court ruled in that case that there is no constitutional right to the effective assistance of counsel in state post-conviction proceedings. However, the Court further held that an inmate who files a federal petition for writ of habeas corpus may assert ineffective assistance of post-conviction counsel as *"cause"* to excuse his failure to properly assert an ineffective assistance of trial counsel claim in state court. Ordinarily, an inmate who does not properly assert an ineffective assistance claim in state court is precluded from raising the claim in federal court. Yet under *Martinez*, there may be instances in which the federal courts will allow the inmate to litigate the effectiveness of post-conviction counsel to attempt to demonstrate why the inmate should be allowed to raise an ineffective assistance of trial counsel claim. On August 22, 2012, the United States Supreme Court issued a stay of execution in *Balentine v Thaler*, to consider whether *Martinez v Ryan* had application to this Texas capital case. *Balentine* is pending at this time.

[6] The Legislature's fact sheet referred to in footnote 4 also contained the following summary: *"As session law, continues to suspend the requirement of 50% reimbursement to counties for grand jury expenses and for state-funded representation of indigent defendants in first-time capital conviction relief proceedings and reimburse only the amount provided in the General Appropriation Act."* The net effect is that the cost of a capital defendant's PCR rests with the county.

to at least one-hundred twenty-five dollars. The Oversight Committee believes that an hourly rate of one-hundred seventy-five dollars, which is comparable to the federal rate in a capital case, would encourage more qualified attorneys to apply for capital PCR appointments.

Recommendation #2: Establish a process to evaluate applications for appointment on capital PCR petitions. This recommendation appeared in the committee's 2010 report.

In 1996, the Arizona Supreme Court by administrative order established an *"advisory committee"* to screen applications by private counsel for appointment on capital PCR petitions. The Court disbanded the advisory committee in 2001. The Oversight Committee considered proposals to reestablish an advisory committee because of a belief that the current screening process was not adequate "*due diligence.*"

Coincidentally, in January 2012, the Maricopa County Superior Court entered Administrative Order 2012-008, superseded by Administrative Order 2012-118 entered on August 10, 2012; see Appendix 9. The Order requires a formal evaluation by a *"Capital Defense Review Committee"* of applications for appointment of capital case counsel by the trial court, that is, on appointments as a capital defendant's lead trial counsel, trial co-counsel, and appellate counsel. A.O. 2012-118 provides that all capital counsel eligible for appointment through the Maricopa County Office of Public Defense Services receive an evaluation every three years of his or her qualifications, and have approval of the presiding criminal judge for appointment on a capital case. However, this Maricopa County Administrative Order does not require the Maricopa committee to screen applications for appointment on capital PCRs, because attorneys submit those applications to the Arizona Supreme Court rather than to Maricopa County.

A workgroup led by Justice Ryan considered proposals that would allow the Supreme Court to more rigorously evaluate applications for appointment on a capital PCR petition. At first, the workgroup discussed a formal *"screening committee,"* which would be established by an administrative order, and which would be similar to the screening committee established by the Court in 1996. Later, however, the workgroup focused on a proposal, shown in Appendix 10, for an *"advisory panel."* The advisory panel would not be created by an administrative order. Rather, panel members would serve at the invitation and pleasure of the Chief Justice or a designee. The advisory panel would be composed of five members; at least one member would be a judge, and at least two members would be experienced defense counsel. The advisory panel would conduct a due diligence evaluation of an applicant. The advisory panel thereafter would make a recommendation to a Supreme Court staff attorney about whether the applicant should be placed on the appointment list, and the staff attorney would in turn transmit the recommendation to the Court. The advisory panel proposal envisions an informal and flexible information-gathering and evaluation process that would provide relevant information for the panel members, and which would allow the advisory panel to have candid and confidential discussions about each applicant. The advisory panel would also conduct periodic evaluations of attorneys who are already on the Court's appointment list. At their February 29, 2012 meeting, the Oversight Committee members unanimously recommended that the Supreme Court adopt the advisory panel proposal.

Recommendation #3: Encourage continuing training and education for judges, prosecutors, defense attorneys, and others who handle capital cases. Arizona's first Capital Case Litigation

Conference convened in Phoenix in May 2010. This three-day conference, attended by more than 170 judges, prosecutors, and defense counsel, was remarkable for its collaborative education on the death penalty. Chief Justice Berch and Justice Ryan were among the speakers at this conference. The Bureau of Justice Assistance and the National Judicial College provided grant funding for this event, and the Education Services Division of the Administrative Office of the Courts (*"AOC"*) administered the grant. The grant also made possible through the AOC in December 2011 eight additional hours of video instruction on capital cases.

Continuing legal education for attorneys and judges who handle capital cases is not optional; it is a necessity. The Committee ardently supports capital case training, grant-funded or otherwise, through the Federal Public Defender, the Arizona Public Defenders Association, the Arizona Prosecuting Attorneys Advisory Council, the AOC, or other organizations. It is essential that everyone in the capital case arena – not just defense counsel but also prosecutors, judges, mitigation specialists, and others – be diligent, competent, and effective in performing their duties in capital cases.

Recommendation #4: Extend the term of the Oversight Committee. The objective of the Oversight Committee was to monitor efforts to reduce the volume of capital cases in Maricopa County. In light of that court's substantial reduction in its number of capital cases, Oversight Committee staff believed this objective was achieved, and staff proposed at the Committee's most recent meeting a recommendation that the Supreme Court disband the Committee.

The members, however, unanimously opposed disbanding the Oversight Committee. The members believe that the Court should not disband the Committee because there are ongoing issues, and one member commented that as long as there is a death penalty in Arizona, new issues would continue to arise. The members of the Committee have a valuable historical perspective that has developed over the past several years, and they believe that this group should remain intact. The members therefore recommend that the Court extend the Committee for a year; or suspend the Committee until reactivation is necessary; or make this a permanent committee rather than a temporary one. Because the issues are statewide, the members also recommended the addition of a Pima County member.

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1. Number of Capital Cases Pending Trial in the Maricopa County Superior Court: October 2008 through September 2012

2. Maricopa County Capital Case Recap: October 2008 to September 2012

3. Maricopa: Combined data summary for twelve month periods

4. Capital cases pending trial in Arizona by county: 2008 to 2012

5. Number of Capital Cases Pending Trial Outside Maricopa County, July 2008 to September 2012

6. Capital Cases Pending Trial Statewide, July 2008 to September 2012

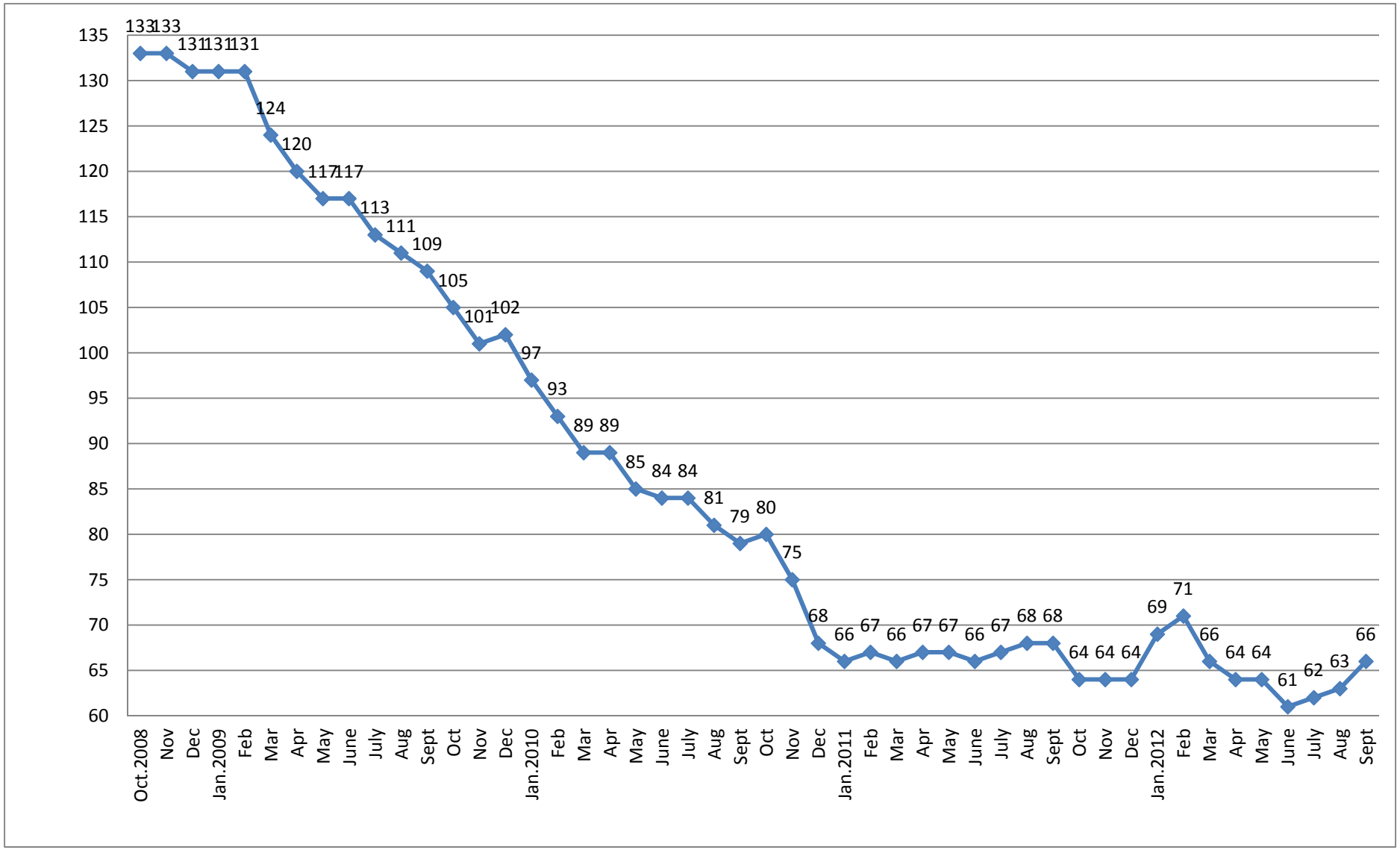
7. Number of Defendants Sentenced to Death Statewide, 2008 to 2012

8. Executions, 2000 to September 2012

9. Maricopa County Superior Court Administrative Order 2012-118

10. Capital PCR Advisory Panel Proposal

#1: Number of Capital Cases Pending Trial in the Maricopa County Superior Court: October 2008 through September 2012



Maricopa County
Four-year capital case recap

#2: Maricopa County Capital Case Recap: October 2008 to September 2012 (4 years)

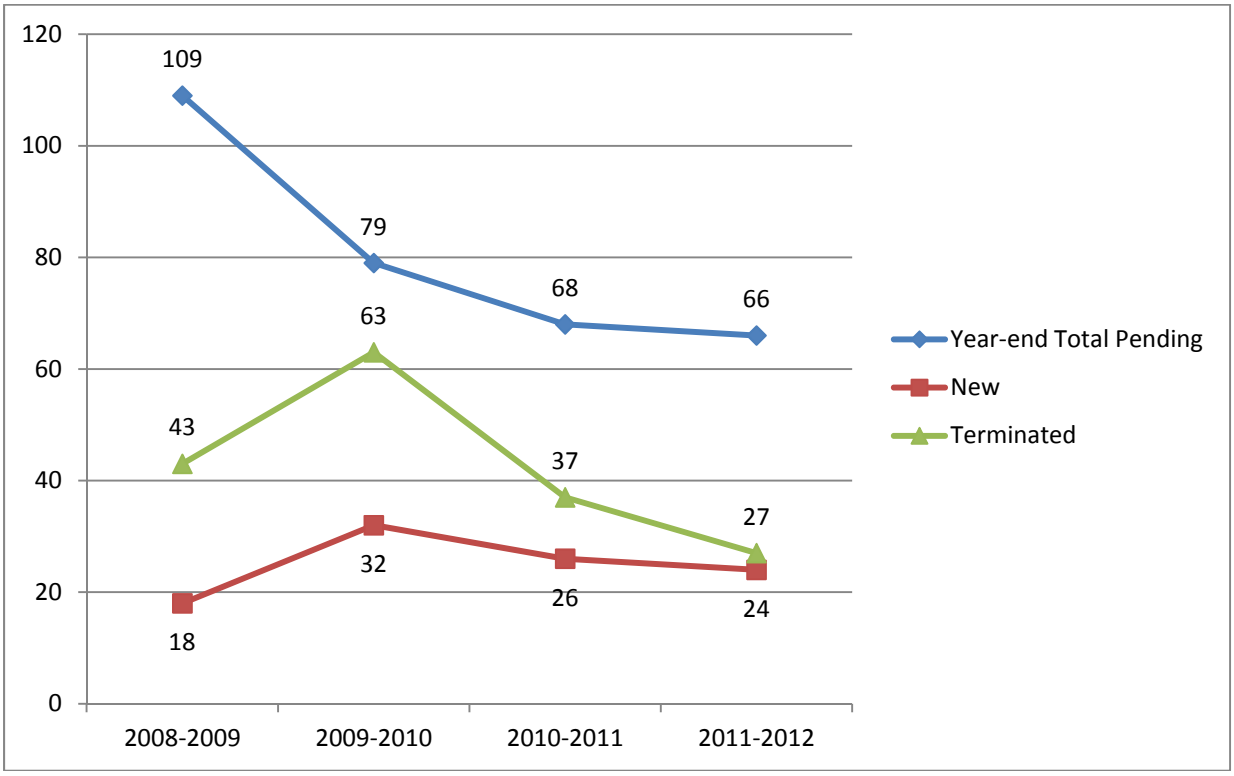
MONTH	**# OF NEW CASES**	**# OF ACTIVE CASES TERMINATED**	**DEFENDANTS SENTENCED TO DEATH**
October 2008	3	1	0
November	2	2	0
December	1	3	0
January 2009	1	2	1: Prince [*Ring*]
February	2	2	0
March	0	7	1: Hausner
April	2	5	1: Lehr [*Ring*]
May	0	4	1: Delahanty
June	0	3	1: Gallardo
July	3	4	1: Grell [*Ring*]
August	3	5	2: Cota, Hardy
September	1	5	1: Manuel
12 month sub-total	18	43	9
October	3	7	0
November	1	5	1: Van Winkle
December	7	6	1: Patterson
CY 2009 sub-total	23	55	11
January 2010	1	6	1: Medina
February	0	5	2: Boyston, Ovante
March	1	5	0
April	2	2	2: Joseph, Martinez
May	2	6	1: Parker
June	5	6	0
July	5	5	0
August	3	6	1: Fitzgerald
September	2	4	0
12 month sub-total	32	63	9
October 2010	4	3	2: Gomez, Rose
November	1	6	0
December	1	8	1: Hernandez
CY 2010 sub-total	27	62	10
January 2011	3	5	0
February	3	2	1: Burns
March	2	3	0
April	1	0	0
May	3	3	2: Naranjo, Reeves
June	1	2	0
July	1	0	0
August	4	3	0
September	2	2	1: Miller
12 month sub-total	26	37	7
36 month total	**76**	**143**	**25**

Maricopa County
Four-year capital case recap

Maricopa County Capital Case Recap: Continuation

MONTH	**# OF NEW CASES**	**# ACTIVE CASES TERMINATED**	**DEFENDANTS SENTENCED TO DEATH**
October 2011	2	6	1: Benson
November	2	2	1: Goudeau
December	1	1	0
CY 2011 sub-total	25	29	6
January 2012	6	1	0
February	3	1	0
March	1	6	0
April	0	2	0
May	1	1	0
June	0	3	0
July	2	1	0
August	2	1	1: Lynch
September	4	2	1: Anthony
12 month sub-total	24	27	4
48 month total	**100**	**170**	**29**

#3: Maricopa: Combined data summary for twelve month periods

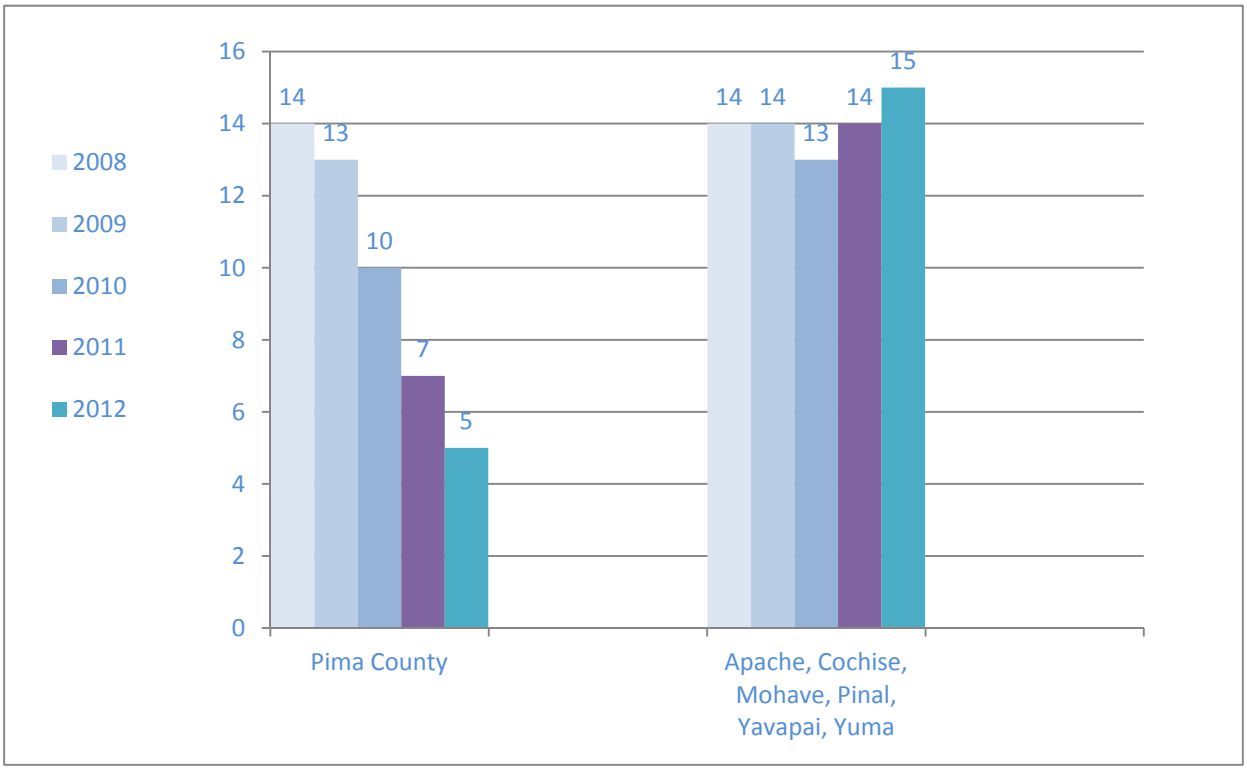


#4: Capital cases pending trial in Arizona by county: 2008 to 2012

County	July 2008	Sept. 2009	Sept. 2010	Sept. 2011	Sept. 2012[i]
Apache	1	1	0	0	0
Cochise	0	0	1	3	3
Coconino	0	0	0	0	0
Gila	0	0	0	0	0
Graham	0	0	0	0	0
Greenlee	0	0	0	0	0
La Paz	0	0	0	0	0
Maricopa	127	109	79	68	63
Mohave	2	3	2	1	1
Navajo	0	0	0	0	0
Pima	14	13	10	7	5
Pinal	3	4	5	5	5
Santa Cruz	0	0	0	0	0
Yavapai	3	2	2	2	5
Yuma	5	4	3	3	1
TOTAL	**155**	**136**	**102**	**89**	**83**

[i] The 2012 survey started on August 30, 2012 and concluded on September 18. The August ending number, 63 cases, is therefore used for Maricopa County rather than the end of September number of 66 cases. The reported numbers in this table may include cases in which a defendant has entered a plea with a non-death sentence, and pronouncement of judgment is pending.

#5: Number of **Capital Cases Pending Trial Outside Maricopa County**



#6: Number of **Capital Cases Pending Trial Statewide**

Date	# of Cases
July 2008	155
Sept 2009	136
Sept 2010	102
Sept 2011	89
Sept 2012	83

#7: Number of Defendants Sentenced to Death Statewide

Year	# of Defts	Source by County
2008	5	Maricopa (5)
2009	15	Maricopa (11), Pima (3), Mohave (1)
2010	10	Maricopa (10)
2011	8	Maricopa (6), Pima (2)
2012: 9 mos.	3	Maricopa (2), Pima (1)

#8: Number of Executions in Arizona

Year	# of Executions
2001-2006	0
2007	1
2008	0
2009	0
2010	1
2011	4
2012	5

#9: Maricopa County Superior Court Administrative Order 2012-118

and

#10: Capital PCR Advisory Panel Proposal

Please see the following pages.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE MATTER OF ADOPTING A PLAN FOR REVIEW OF APPOINTED DEFENSE COUNSEL	))))	ADMINISTRATIVE ORDER NO. 2012-118

WHEREAS, Rule 6.2 of the Arizona Rules of Criminal Procedure requires the Presiding Judge to establish procedures for appointment of counsel; and

WHEREAS, Rule 6.5 of the Arizona Rules of Criminal Procedure provides that appointments shall take into account "the skill likely to be required in handling a particular case;" and

WHEREAS, Rule 6.8 of the Arizona Rules of Criminal Procedure sets standards for appointment and performance of defense counsel in capital cases,

IT IS ORDERED adopting the Plan for Review of Appointed Defense Counsel, attached as Exhibit A.

IT IS FURTHER ORDERED this Administrative Order expires automatically without further Order on a date ten (10) years from the date of issuance in accordance with Arizona Code of Judicial Administration, Section 3-402(C), unless sooner modified, amended or replaced.

IT IS FURTHER ORDERED terminating Administrative Order No. 2012-008.

Dated this 10th day of August, 2012.

_____
Norman J. Davis
Presiding Judge

Original: Clerk of the Superior Court

Copies: Hon. Douglas Rayes, Criminal Presiding Judge
Superior Court Judges and Commissioners – Criminal Department
Hon. Tom Horne, Attorney General
Hon. Bill Montgomery, County Attorney
James Logan, Public Defense Services
Jim Haas, Public Defender
Marty Lieberman, Legal Defender
Bruce F. Peterson, Legal Advocate
Phil Knox, General Jurisdiction Courts Administrator
Bob James, Criminal Court Administrator

Exhibit A

PLAN FOR REVIEW OF APPOINTED DEFENSE COUNSEL

AUTHORITY

This "Plan for Review of Appointed Defense Counsel Criminal" (the "Plan") is created pursuant to the Arizona Rules of Criminal Procedure. The Rules of Criminal Procedure assign certain judicial functions to the Presiding Judge in relation to the appointment of counsel in criminal cases. Rule 6.2 provides that the Presiding Judge shall establish procedures for appointment of counsel. Rule 6.5(c) provides that appointments shall take into account "the skill likely to be required in handing a particular case." Rule 6.8 sets standards for appointment and performance of defense counsel in capital cases. The persons implementing and carrying out this Plan, specifically including the members of the two review committees, are acting under the authority of the Presiding Judge of the Superior Court of Arizona in Maricopa County to assist the Presiding Judge in carrying out his or her judicial responsibilities.

PURPOSE OF PLAN

This Plan is intended to further the goals articulated in the "Resolution on Indigent Defense Services Provided by the Court to Juveniles and Adults" adopted by the Maricopa County Board of Supervisors and approved by the Superior Court of Arizona in Maricopa County in 1992. The Plan establishes "performance requirements" and "a system which allows for regular evaluation of contract attorneys . . . including provisions leading to contract termination when performance is below standard." It creates "Review Committee[s]" to assist in "reviewing, selecting and monitoring indigent legal services contracts." These mechanisms are "consistent with . . . applicable standards of the National Legal Aid and Defenders Association (NLADA) and the American Bar Association (ABA)," which require institutionalized quality control for indigent defense services.

The Plan is intended to ensure, to the extent possible, that attorneys appointed to represent indigent defendants in the Superior Court of Arizona in Maricopa County provide skilled, knowledgeable and conscientious legal representation to their clients. That representation should be commensurate with the gravity of the charges and the severity of the potential consequences for the defendant. These principles shall inform the operation and administration of the Plan. With respect to capital cases, the Plan is intended to serve as a "Legal Representation Plan" as described in Guideline 2.1 of the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (the "ABA Guidelines"). The Capital Defense Review Committee is intended to perform some of the duties of a "Responsible Agency" as provided in Guideline 3.1 of the ABA Guidelines.

The Plan will at all times be administered in a manner consistent with and in furtherance of an attorney's ethical and professional obligations under Supreme Court Rule Rules 41 (obligations of lawyers including respect for courts and professionalism) and 42 (Arizona Rules of Professional Conduct). Nothing in this Plan is intended to confer on any attorney any right to

enter into or continue under or renew a contract for indigent defense services, or any right or benefit of any kind not provided for by such a contract.

REVIEW COMMITTEES

Capital Defense Review Committee

A Capital Defense Review Committee shall be established. That committee shall be composed of:

- The director of OPDS and the heads of the three Maricopa County adult indigent criminal defense offices, or their designees;
- The Presiding Criminal Judge or a Maricopa County Superior Court Judge designated by the Presiding Criminal Judge; and
- Four members of the criminal defense bar, appointed by the Presiding Criminal Judge, who do not hold a current OPDS contract or have a contract application currently pending and who are not currently employed by a Maricopa County indigent defense agency.

All members of the Capital Defense Review Committee must have substantial experience in the defense of capital cases or experience presiding over capital trials. Current active membership in the Bar is not required.

Felony Defense Review Committee

A separate Felony Defense Review Committee also shall be established. That committee shall be composed of:

- The director of OPDS and the heads of the three Maricopa County adult indigent criminal defense offices, or their designees;
- The Presiding Criminal Judge or a Maricopa County Superior Court Judge designated by the Presiding Criminal Judge; and
- Four members of the criminal defense bar, appointed by the Presiding Criminal Judge, who do not hold a current OPDS contract or have a contract application currently pending and who are not currently employed by a Maricopa County indigent defense agency.

All members of the Felony Defense Review Committee must have substantial experience in the defense of felony cases or experience presiding over felony trials. Current active membership in the Bar is not required.

Where this Plan refers to "the Committee," the reference is intended to apply to both the Capital Defense Review Committee and the Felony Defense Review Committee unless the context requires otherwise.

Committee Procedures

The Committee chairs and vice-chairs shall be appointed by the Presiding Criminal Judge from among the current Committee members for a term of one year which can be renewed for up to three consecutive years

Upon the establishment of each Committee, the Presiding Criminal Judge shall appoint one of the criminal defense bar members for a one-year term, another for a two-year term, and the other two for three-year terms. All subsequent appointments or re-appointments shall be for three-year terms.

Each Committee shall establish guidelines for its operation, with the approval of the Presiding Criminal Judge. Operating guidelines may be reviewed and revised from time to time at the discretion of the Chair. Proposed guidelines shall be submitted to the Director of OPDS before adoption, to ensure compliance with applicable laws, rules and contract provisions.

FUNCTION OF THE COMMITTEE

The Capital Defense Review Committee and the Felony Defense Review Committee shall determine whether attorneys holding contracts to provide indigent defense services in Maricopa County are qualified for appointment under the criteria established in this Plan. Based on those determinations, the Committee shall make recommendations to the Criminal Presiding Judge concerning the assignment of contract holders to the types of cases provided for in their respective contracts.

Review of Qualifications

The Capital Defense Review Committee shall review the qualifications of each attorney listed on the OPDS Attorney Services Registry as to whom OPDS requests evaluation for assignment to capital cases. The Capital Defense Review Committee shall determine, based on the Committee's review of qualifications, what type of cases (if any) the attorney may be assigned from the following categories:

- Capital – Lead counsel
- Capital – Co-counsel
- Capital Direct Appeal

The Felony Defense Review Committee shall review the qualifications of each attorney listed on the OPDS Attorney Services Registry as to whom OPDS requests evaluation for assignment to non-capital felony cases. The Felony Defense Review Committee shall determine, based on the Committee's review of qualifications, what type of cases (if any) the attorney may be assigned from the following categories:

- Major Felony
- Felony

To be deemed qualified for assignment to felony cases, the attorney must demonstrate that he or she meets the following criteria:

- The attorney is a member in good standing of the State Bar of Arizona.
- The attorney meets, and can be expected to continue to meet, the minimum qualifications established by the Arizona Rules of Criminal Procedure.
- The attorney complies with, and can be expected to continue to comply with, Arizona Supreme Court Rule 41 (obligations of lawyers including respect for courts and professionalism), Rule 42 (Rules of Professional Conduct) and Rule 45 (continuing legal education); and OPDS contract obligations.
- The attorney provides, and can be expected to continue to provide, skilled, knowledgeable, thorough and conscientious representation to his or her clients, commensurate with the gravity of the charges and the severity of the potential consequences for the defendant.
- The attorney meets, and can be expected to continue to meet, the performance and practice standards of the profession and this Plan

Each calendar year, OPDS shall forward to the Felony Defense Review Committee the names of one-sixth of the attorneys currently receiving assignments to non-capital felony cases and the names of all attorneys as to whom OPDS requests evaluation for assignment to non-capital felony cases, along with copies of each attorney's most recent contract application and the additional information called for in this Plan. Effective six years from the date of adoption of this Plan, an attorney shall not be eligible for assignment to non-capital felony cases pursuant to a Maricopa County Adult Criminal Contract unless that attorney has completed the required review of qualifications and has been approved for assignment by the Presiding Criminal Judge.

To be deemed qualified for assignment to capital cases, the attorney must demonstrate that he or she meets all of the above criteria, and also the following additional criteria.

- The attorney meets, and can be expected to continue to meet, the minimum eligibility requirements of Criminal Rule 6.8.
- The attorney possesses the qualifications set forth in Guideline 5.1 of the ABA Guidelines.
- The attorney has a demonstrated history of practice, and can be expected to continue to practice, in accordance with the performance and practice standards set forth in Guidelines 10.1 through 10.13 of the ABA Guidelines.

Each calendar year, OPDS shall forward to the Capital Defense Review Committee the names of one-third of the attorneys currently receiving assignments to capital cases and the names of all attorneys as to whom OPDS requests evaluation for assignment to capital cases, along with copies of those attorneys' most recent contract application and the additional information called for in this Plan. Effective three years from the date of adoption of this Plan, an attorney shall not be eligible for assignment to capital cases pursuant to a Maricopa County Adult Criminal Contract unless that attorney has completed the required review of qualifications and has been approved for assignment by the Presiding Criminal Judge.

Evaluation Process

When OPDS forwards the name of an attorney to the Committee, the Committee shall initiate a review of the attorney's qualifications to determine whether the attorney meets the criteria established by this Plan and therefore should be recommended for case assignment.

The Committee shall require an attorney undergoing review of qualifications to complete a written application separate from the contract application. The application form shall be created by the Committee and revised from time to time as necessary. The application shall require the attorney to provide, at a minimum, a list of representative cases handled by the attorney; references from judges and co-counsel; writing samples; and a summary of relevant continuing legal education for at least the three years immediately preceding the application. The Capital Defense Review application also shall require a complete list of capital cases in which the attorney has participated in the ten years immediately preceding the application, including case name and number; assigned judge; names, business addresses and telephone numbers of all attorneys in the case; and names, business addresses, and telephone numbers of all non-attorney defense team members. An attorney seeking assignment to capital cases also must identify a comprehensive training program in the defense of capital cases that the attorney will complete within one year of approval for assignment, unless the attorney can demonstrate that he or she has completed such a program within the two years immediately preceding the application.

The Committee shall review applications, check references, evaluate work product, and conduct additional inquiry to determine whether an attorney applicant possesses the qualifications required by this Plan. The Committee may solicit input or comments from judges, attorneys, and others. The inquiry by the Capital Defense Review Committee shall include, and the inquiry by the Felony Defense Review Committee may include, interviews of persons not listed as references who are familiar with the applicant's work.

Upon completion of its inquiry, the Committee shall meet and discuss each attorney applicant. The Capital Defense Review Committee shall interview an attorney applicant before recommending the attorney for assignment to capital cases. The Felony Defense Review Committee may interview attorney applicants at its discretion.

The Committee shall recommend whether an attorney applicant should receive assignments in each category of cases for which assignment is authorized under the attorney's Maricopa County Adult Criminal Contract. An attorney whom the Committee has tentatively decided not to recommend for assignment, in one or more of the categories of cases for which the attorney is eligible under his or her contract, shall be notified in writing of the tentative adverse recommendation and given an opportunity to be heard as to his or her qualifications either in writing or by in-person meeting with the Committee or both, before the Committee makes a final recommendation.

The Committee shall issue a final recommendation as to whether an attorney should receive case assignments within 180 days of receipt of the attorney's written application, unless the circumstances make action within 180 days impracticable. The Committee chair shall transmit

the Committee's final recommendations to the Presiding Criminal Judge in writing. The Presiding Criminal Judge may meet with the Committee chair to discuss the recommendations, at the Presiding Criminal Judge's discretion.

When the Committee recommends to the Criminal Presiding Judge that an attorney should not receive case assignments, in one or more of the categories of cases for which the attorney is eligible under his or her contract, the Criminal Presiding Judge shall give the attorney an opportunity to submit a written statement or other written information concerning his or her qualifications before making a final decision.

After reviewing and considering the Committee's recommendations and any attorney submissions, the Presiding Criminal Judge shall provide to the Director of OPDS a list of attorneys currently approved for the assignment of cases and the category or categories of cases to which each attorney may be assigned. OPDS shall notify attorney applicants in writing of the Presiding Criminal Judge's final decision.

Re-evaluation

The Committee shall periodically re-evaluate the attorneys approved for case assignments under this Plan, to ensure that each attorney continues to meet the criteria established by the Plan. The Capital Defense Review Committee shall re-evaluate attorneys at intervals of not more than three years. The Felony Defense Review Committee shall re-evaluate attorneys at intervals of not more than six years.

The Committee may re-evaluate an attorney at any time, at the request of the Presiding Criminal Judge or at the Committee's discretion, when there is reason to believe that the attorney has not met or may not continue to meet the applicable criteria. Grounds for non-routine re-evaluation may include (but are not limited to) Bar discipline; sanctions imposed by a court; a complaint from a judge, a member of the bar or a client; misconduct or gross negligence in the representation of a client, or a pattern of inadequate representation of clients; excessive caseload; failure to comply with training requirements; or violations of contract terms. An attorney being re-evaluated on other than a routine basis shall be notified in writing and given an opportunity to submit a written statement or other written information to the Committee, before the Committee meets to discuss the attorney.

The Committee shall require an attorney undergoing re-evaluation to update the attorney's prior written application. The attorney also shall provide a list of representative court-appointed cases since the prior application, a summary of recent continuing legal education and certification of compliance with training and professional development requirements. The Capital Defense Review application shall require the attorney to provide a complete list of capital cases in which the attorney has participated since the prior application, including case name and number; assigned judge; names, business addresses, telephone numbers of all attorneys in the case; and names, business addresses, and telephone numbers of all non-attorney defense team members.

When re-evaluating an attorney's qualifications, the Committee shall utilize the information that the Maricopa County Adult Criminal Contract requires the attorney to submit to OPDS, such as case logs, final disposition records, time sheets and requests for approval of expenditures. The Committee also shall review complaints about the attorney and requests for a different attorney, if any, received by OPDS or the Committee from any source. The Committee may review any records and accounts, relating to the work performed or the services provided by an attorney in a particular case, that OPDS is authorized to review pursuant to the contract.

The process for re-evaluating attorney qualifications, and the right of an attorney to be heard during the process, shall be the same as the initial review of qualifications. When the Presiding Criminal Judge makes a final decision as to whether an attorney should continue to receive case assignments, the Presiding Criminal Judge shall revise the list of approved attorneys accordingly and provide the revised list to the Director of OPDS. OPDS shall notify each attorney in writing of the Presiding Criminal Judge's final decision.

Records

Committee operating guidelines, final and approved meeting minutes (if any) and final written recommendations to the Criminal Presiding Judge shall be open to the public and available for inspection upon appropriate public records request. These records shall be maintained for seven years by the Court Administrator as custodian of the records.

All other records relating to the attorney review process shall remain confidential except as otherwise specifically provided in this Plan. In order for the evaluation process to be effective and fair, the Committee must obtain complete, reliable and accurate information from the attorneys being evaluated and the judges, attorneys and others from whom information is sought. The Committee then must evaluate the information thoroughly and discuss it candidly. The potential for public disclosure would chill the flow of reliable information and discourage candid discussion. Moreover, both the attorney applicants and the third party information providers have legitimate confidentiality and privacy interests, some of which derive from their professional obligations to others.

PERFORMANCE AND PRACTICE STANDARDS

For purposes of determining whether a trial attorney possesses "the skill likely to be required" in handling the cases to which the attorney will be appointed, as required by Rule 6.5(c), the Committee shall apply the following performance and practice standards.

I. Attorney represents clients in accordance with applicable ethical rules and standards of professional conduct, including but not limited to:

   a. Contacting and conferring with the client concerning the representation within a maximum of 48 hours of notice of assignment;

b. Maintaining reasonable contact and adequately communicating with the client until the representation is terminated;
c. Using reasonable diligence in notifying the client of necessary court appearances including any court action that arises out of the client's non-appearance;
d. Conducting all out-of-court preparation required for competent representation of the client, including a prompt and thorough client interview and such additional interviews and investigation as may be appropriate;
e. Appearing in court on time and prepared for scheduled proceedings;
f. Displaying appropriate respectful professional demeanor and conduct in all dealings with the court, opposing counsel, victims and witnesses, and the client.

II. Attorney demonstrates and maintains proficiency in all applicable aspects of substantive law, procedural rules, and trial advocacy, including but not limited to the following:

a. Recognition of legal issues;
b. Effective legal research and use of pretrial motions;
c. Effective case development including thorough client interviews, appropriate use of investigators and timely and comprehensive witness interviews;
d. Effectiveness in plea negotiations;
e. Effective use of experts when necessary;
f. Thorough and effective trial preparation including anticipation of key legal issues, evaluation of admissibility of evidence, discussion of the defendant's role including possible testimony, and preparation of witnesses including the defendant if necessary;
g. Willingness to try cases;
h. Advocacy skills;
i. Effective sentencing presentation.

III. Attorney manages law practice efficiently and effectively in relation to assigned clients and complies with OPDS contract obligations.

For purposes of determining whether an appellate attorney possesses "the skill likely to be required" in handling the cases to which the attorney will be appointed, as required by Rule 6.5(c), the Committee shall apply the following performance and practice standards.

I. Attorney represents clients in accordance with applicable ethical rules and standards of professional conduct, including but not limited to:

a. Notifying the client concerning the representation within 48 hours of notice of assignment and conferring with the client promptly thereafter;

b. Maintaining reasonable contact including in-person communication and adequately communicating with the client until the representation is terminated;
c. Using reasonable diligence in notifying the client of all court actions, deadlines and orders;
d. Conducting all out-of-court preparation required for competent representation of the client, including a prompt and thorough review of the trial record and such additional development or supplementation of the record as may be appropriate;
e. Appearing in court on time and prepared for scheduled proceedings;
f. Displaying appropriate respectful professional demeanor and conduct in all dealings with the court, opposing counsel, victims and witnesses, and the client.

II. Attorney demonstrates and maintains proficiency in all applicable aspects of substantive law, procedural rules, and appellate advocacy, including but not limited to the following:

a. Recognition of legal issues;
b. Effective legal research, briefing and motion practice;
c. Familiarity with the practice and procedure of the Arizona Supreme Court in the appeal of capital cases, the practice and procedure of the United States Supreme Court in the application for writs of certiorari in capital cases, and the law controlling the scope of and entitlement to state post-conviction and federal habeas corpus review;
d. Effectiveness in plea negotiations;
e. Advocacy skills.

III. Attorney manages law practice efficiently and effectively in relation to assigned clients and complies with OPDS contract obligations.

The Capital Defense Review Committee shall apply, in addition to the foregoing performance and practice standards, the performance and practice standards set forth in Guidelines 10.1 through 10.13 of the ABA Guidelines.

OTHER ASPECTS OF INDIGENT DEFENSE REVIEW

Training and Professional Development

An attorney seeking assignment to capital cases must attend and successfully complete a comprehensive training program in the defense of capital cases within one year of the attorney's initial approval for assignment, unless the attorney has completed such a program within the two years immediately preceding approval. In order to maintain eligibility for assignment to capital cases, the attorney must attend and successfully complete, at least once every two years, at least twenty-four hours of continuing legal education specifically relating to the defense of criminal cases, at least twelve hours of which shall consist of specialized training in the defense of capital cases.

An attorney seeking assignment to non-capital cases felony must attend and successfully complete twelve hours of continuing legal education specifically relating to the defense of criminal cases within one year of the attorney's initial approval for assignment, unless the attorney has completed such training within the two years immediately preceding approval. In order to maintain eligibility for assignment to non-capital felony cases, the attorney must attend and successfully complete, at least once every two years, at least twelve hours of continuing legal education specifically relating to the defense of criminal cases.

An attorney receiving case assignments under this Plan shall maintain records demonstrating compliance with training requirements. The Committee may require an attorney to show satisfactory evidence of compliance at any time.

Although each Committee (or the two of them together) may present or facilitate relevant continuing legal education and training, each attorney is responsible for his or her own compliance with training requirements. It is not anticipated that the Committees will underwrite or subsidize attorney training.

Collection and Reporting of Information

An attorney receiving case assignments under this Plan shall create and maintain all records required by the Maricopa County Adult Criminal Contract, including detailed and accurate case logs, final disposition records and time sheets relating to client representation. The attorney also shall comply with contract requirements relating to OPDS approval of case-related expenditures (for expert witness fees, travel expenses, investigators, mitigation specialists in capital cases, service of process, court transcript fees and other reasonable and necessary expenditures) and notice to OPDS of requests for judicial approval of expenditures or additional compensation. Copies of required records and documentation shall be retained by the attorney and provided to the Committee on request.

The Presiding Criminal Judge shall work with the Clerk of the Court to create a process by which OPDS and the appropriate Committee routinely receive notice that a defendant has asked to terminate an assigned OPDS attorney's representation, and the result of that request.

Complaints

Upon receipt by OPDS of a complaint about an attorney, from any person, OPDS shall forward or refer the complaint to the appropriate Committee.

The Committee may forward a complaint about an attorney to that attorney, with or without a request for response. Before considering a complaint in the evaluation or re-evaluation of an attorney, the Committee shall forward the complaint to the attorney and ask for a response. When asked to respond to a complaint, the attorney must do so in writing within 10 days as required by the Maricopa County Adult Criminal Contract.

If the Committee receives a written complaint or communication from a defendant specifically asking to terminate an ongoing representation, the Committee shall immediately forward the communication to the assigned judicial officer unless OPDS has already done so.

#10: Capital PCR Advisory Panel Proposal

***Note:* On February 29, 2012, the Capital Case Oversight Committee unanimously passed a motion recommending that the Court adopt the following Capital PCR Advisory Panel proposal.**

Capital PCR Advisory Panel

1. A.R.S. § 13-4041(C) provides in part that "…the supreme court shall establish and maintain a list of persons who are qualified to represent capital defendants in those cases in which the court does not appoint counsel from the state capital post conviction public defender office."

2. The Supreme Court's staff attorneys currently maintain a list of persons pursuant to the foregoing statute.

3. The staff attorneys currently receive applications for appointment on capital PCRs, review and investigate the applications, and submit applications, materials, and recommendations for appointment to the Supreme Court. The Supreme Court then decides whether an applicant is qualified and if the attorney should be included on the list maintained by its staff attorneys.

4. The Supreme Court believes that its staff attorneys would benefit from the assistance of judges and defense counsel to recruit qualified candidates for appointment on capital PCRs, and to review and investigate applications for appointment, and that a capital PCR advisory panel ("advisory panel") may informally provide this assistance to its staff attorneys.

5. The advisory panel will consist of five members, including one or more judges and two or more criminal defense attorneys. One of the defense attorneys must be the director of the State Capital Post-conviction Public Defender's Office. The other attorney or attorneys should have significant experience in the defense of capital cases. The members will serve at the invitation and pleasure of the Chief Justice, or his or her designee, for a period of one year, and may serve successive terms.

6. The advisory panel will meet as often as necessary. The staff attorneys' office will staff the advisory panel.

7. Staff will make available to the members of the advisory panel every application of an attorney who seeks to be added to the appointment list, and any related materials. The advisory panel members will then conduct a due diligence investigation concerning the applicant's proficiency and commitment that is required for the defense of a capital case. The due diligence investigation of the advisory panel members must include reviewing and discussing written materials submitted or prepared by the applicant; contacting references provided by the applicant; and contacting people who have interacted with the applicant in relevant matters, including judges, but who were not identified as references. The advisory panel may interview the applicant at the discretion of the panel.

8. After the advisory panel's due diligence investigation is completed, the panel or a majority of its members will make a recommendation to staff concerning whether the applicant should be added to the appointment list, and staff will transmit the recommendation to the Supreme Court. Staff will note and convey to the Supreme Court any disagreement by a member of the advisory panel with the majority's recommendation, or any conditions of the recommendation.

9. The advisory panel must also conduct periodic reviews of attorneys on the list of qualified persons to assure that each attorney continues to have the necessary proficiency and commitment. An attorney on the list must be reviewed (a) when information is brought to the panel's attention that warrants a review; (b) when the attorney requests appointment to another case; or (c) every five years, whichever first occurs. The periodic review need not include the full investigation required by paragraph 7, and the panel may determine what is appropriate and sufficient diligence for a periodic review. The panel's recommendations following a periodic review will be communicated to staff as provided in paragraph 8.

10. The notes and other records of the advisory panel are judicial work product and closed records under Supreme Court Rule 123(e)(9).

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ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2012	_X_ Formal Action/Request __ Information Only __ Other	Wireless Committee's Report

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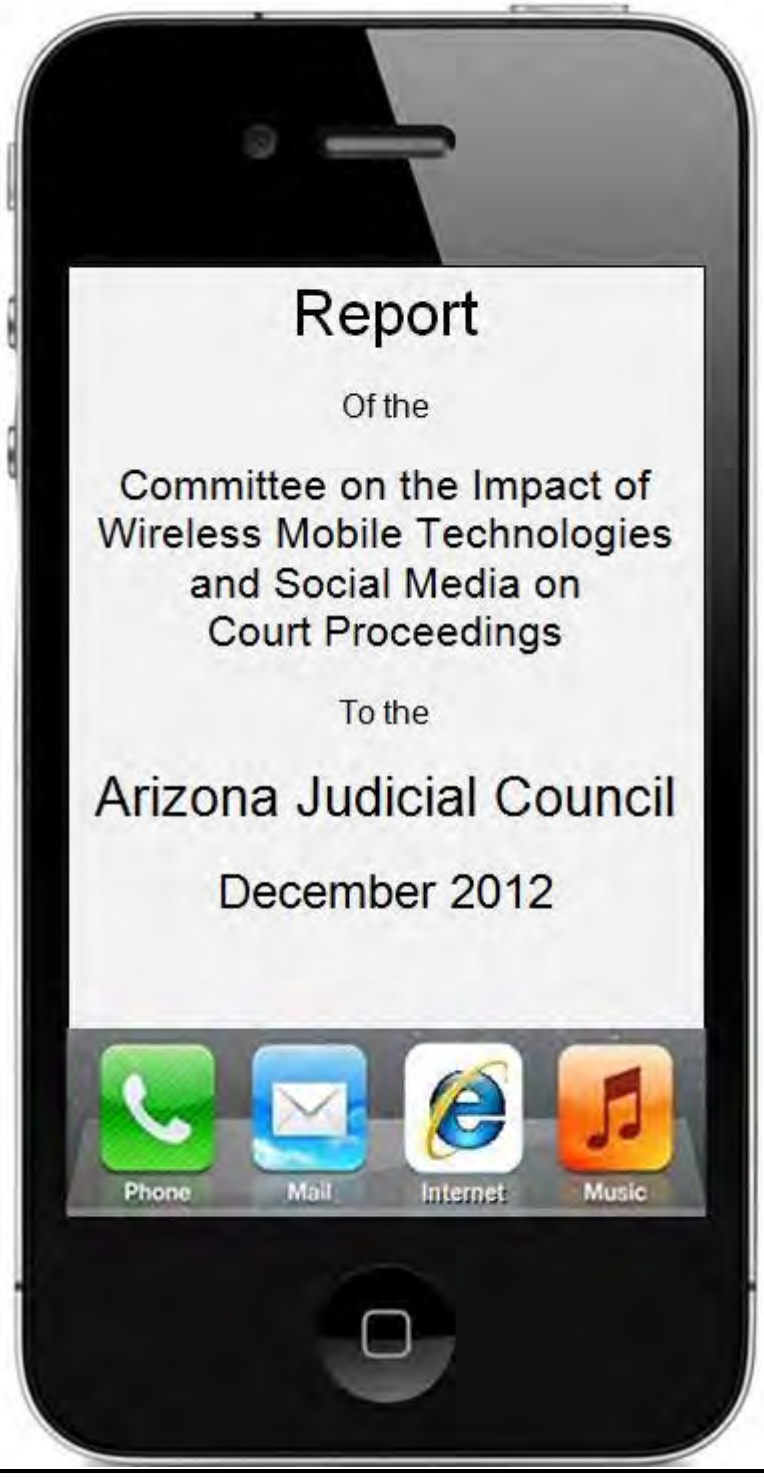
FROM: Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings (also known as the "Wireless Committee")

DISCUSSION: The Chief Justice established the Wireless Committee in March 2012 by Administrative Order 2012-22. This Order directed the Committee to submit a report at the AJC's December meeting. Justice Brutinel, who serves as Committee chair, will present the Committee's report.

The Committee's report includes six recommendations. Most of the recommendations are uncontroversial. However, two of the Committee's recommendations have prompted considerable discussion during vetting sessions over the past few months. Those two recommendations concern revisions to Supreme Court Rule 122, which addresses the use of recording devices such as cameras in the courtroom; and a proposed new Supreme Court Rule 122.1 that describes other permissible uses of portable electronic devices in the courtroom and the courthouse

If the AJC approves the Committee's requests to file rule petitions regarding SCR 122 and 122.1, the Committee intends to request staggered comment periods on those petitions. This would allow the Committee to reconvene after the initial month of public input, to revise the proposed rules as appropriate, and then to receive further public comments on the revised versions.

RECOMMENDED COUNCIL ACTION: The Wireless Committee asks the Council to approve its report and recommendations.



Report

Of the

Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings

To the

Arizona Judicial Council

December 2012

Justice 2020

Members of the Wireless Committee

Chair:
Honorable Robert M. Brutinel
Arizona Supreme Court

Karen Arra
Public Information Officer
Superior Court, Maricopa County

Honorable Janet Barton
Superior Court
Maricopa County

David J. Bodney
Steptoe & Johnson LLP
Media Representative

Honorable James Conlogue
Presiding Judge
Superior Court, Cochise County

Honorable Dan Dodge
Highland Justice Court
Maricopa County

Honorable Margaret Downie
Court of Appeals, Division 1
Chair, Judicial Ethics Advisory Committee

Honorable Michael Jeanes
Clerk of the Court
Superior Court, Maricopa County

Honorable Eric Jeffery
Assistant Presiding Judge
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Honorable Scott Rash
Superior Court
Pima County

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Executive Director
Commission on Judicial Conduct

Committee Staff:
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Administrative Office of the Courts

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Executive Summary

Our society continues to devise electronic technology that is increasingly versatile, easy-to-use, and portable. This ubiquitous technology is now in the hands of the parties, attorneys, witnesses, jurors, and spectators who participate in the more than two million cases filed annually in Arizona. Courthouses have no protective moats insulating them from new technology; portable electronic devices, with their multiple functions and apps, are already well-past the courthouse door.

Chief Justice Berch entered Administrative Order 2012-22 on March 7, 2012 establishing the Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings (the "Wireless Committee"). The Order directed the Wireless Committee, after appropriate study, to recommend a reasonable balance of new technology in the courts with the right of every person to due process, and the need for security in the courthouse. The Order specifically directed the Wireless Committee to:

> (a) Address the use of wireless mobile technology by lawyers, jurors, media, witnesses, and the public who attend and participate in court proceedings;
>
> (b) Provide direction to judges, court security officers, and personnel on the possession and use of photo- and video- enabled technology by courthouse visitors; and
>
> (c) Identify ethical questions for consideration by the Judicial Ethics Advisory Committee, the Commission on Judicial Conduct, or another appropriate Supreme Court committee.

The Wireless Committee met regularly between April and November. It established a workgroup to consider revisions to the jury admonition. As directed by the administrative order, the Wireless Committee submits this report.

Advances in technology allow stakeholders to bring the latest electronic devices into the courthouse, yet many of the issues raised by those new devices have judicial precedents. For example, some jurors previously violated the admonition by searching for information in books or newspapers, on television or radio, or by visiting a scene where events occurred. Today, by using the internet, a juror can view a scene "virtually," or access vast amounts of information with a few keystrokes. The internet simply provides new methods for jurors to violate these established admonitions. Judges traditionally instruct witnesses not to speak with each other about the case. The advent of such things as Facebook and text messaging requires that judges add advice to their traditional instructions to witnesses, but it does not make the old instructions irrelevant. Although cameras today are smaller and quieter, and courthouse visitors have become individual

media centers, the same concerns about cameras in courtrooms have existed for decades. With this perspective, the Wireless Committee's consensus is not to broadly prohibit use of advanced technology, but to accommodate a productive use of this technology within existing rules and ethical principles, and which comports with the needs of the judicial system for due process, decorum, and security.

The intersection of courts and technology is not free of conflicts. The members of the Wireless Committee have seen or learned of instances, and can conceive of a myriad of situations, where individuals abuse technology in the courtroom. For example, and notwithstanding any rule to the contrary, a few individuals may use portable devices to surreptitiously take photographs or make unauthorized recordings while court is in session. Some of those violations will be undetected. Exceptional circumstances and unfortunate events will occur, notwithstanding the most superbly drafted rules. The Wireless Committee hopes its proposals will keep these exceptions to a minimum. Only a total ban of portable electronic devices inside the courthouse, a wholly improbable scenario, would have any chance of eliminating all misuse.

Here are the Wireless Committee's recommendations. The subsequent pages of the report explain these recommendations.

1. Revise Supreme Court Rule 122 on the use of recording devices in a courtroom.

2. Adopt a new Supreme Court Rule 122.1 as a general policy concerning use of portable electronic devices in courtrooms and courthouses.

3. Revise the admonition to the jury, as set out in Recommended Arizona Jury Instruction ("RAJI") Preliminary Civil 9, RAJI Preliminary Criminal 13, and the Judicial College of Arizona ("JCA") Bench Book. In conjunction with the admonition, the Wireless Committee recommends revisions to the jurors' oath, as prescribed in Ariz. R. Civ. P., Rule 47(a)(3) and Ariz. R. Crim. P., Rule 18.6(b). The Wireless Committee also recommends use of a "smart juror" card.

4. Consider revisions to the rules and jury instructions regarding the exclusion of witnesses. The rules and instructions on this subject are contained in Arizona Rules of Evidence, Rule 615; Ariz. R. Crim. P., Rule 9.3; RAJI Preliminary Civil 12 and Criminal 8; and the JCA Bench Book.

5. Consider revisions to RAJI Standard 7, the instruction to an excused alternate juror.

6. Refer judicial ethics questions to the Judicial Ethics Advisory Committee, and request a formal opinion from that committee.

<u>Recommendation 1:</u> Revise Supreme Court Rule 122 concerning the use of recording devices in the courtroom.

Administrative Order 2012-22 specifically mentions only one rule: Supreme Court Rule 122. The Arizona Supreme Court adopted Rule 122 in 1993. Audio and video recording technology has changed considerably over the past twenty years. Mr. Mark Casey, a vice-president and news director of KPNX Channel 12, told the Wireless Committee that a camera now built into an iPhone has resolution far superior to that of a camera, circa 1993, which required two men to move into the courthouse. Rule 122 refers to tripods and wires, but tripods are no longer essential, and wires may be passé. Most cameras today are considerably quieter and less distracting than the ones used in 1993. Some cameras can be operated robotically.

In light of the widespread availability of high quality, compact cameras, should the presumption underlying Rule 122, which requires a judge to allow use of a camera in a courtroom unless he or she finds good cause not to, continue to be Arizona judicial policy? The comments submitted in rule petition number R-07-0016, in opposition to proposed amendments that established the presumption, may be as valid now as they were five years ago. Cameras can make a witness shy, or can embolden courtroom theatrics. The proposition that the presence of a camera has absolutely no effect on a judicial proceeding is a debatable one. Some members of the bench believe that the presumption in Rule 122 favoring camera coverage warrants reconsideration by the Supreme Court. Mr. Casey and others, on the other hand, believe that the public has been educated about the judicial system because of the presence of news cameras.[1]

While keeping the existing presumption intact, the members recognized ways that revisions could benefit Rule 122. The Wireless Committee's draft of Rule 122 is in Appendix 1. Some of the proposed changes are:

- Section (f) of the current rule begins, "Requests by the media for coverage…." Some construe this phrase as requiring only the media to submit a request for camera coverage. Section (c) of the revised rule eliminates this ambiguity and clarifies that any person, and not just a media organization, must submit a request for camera coverage of a court proceeding. A "citizen journalist" may therefore submit a request for coverage, and must do so, if he or she wishes to use a camera in the courtroom.

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[1] The Court has recognized that "[i]t is in the public interest that people understand as fully as possible the operation of the justice system, and the courts in particular." "In the Matter of: Special Electronic Access to Superior Court Proceedings," A.O. No. 2006-9.

- Section (e) of the revised rule incorporates the seven existing factors that a judge must consider in ruling on a coverage request, but it adds one factor. The new factor is "whether the person making the request is engaged in the dissemination of news to a broad community." This additional factor should favor camera use that fulfills the original intent of the rule: making court events available for viewing by the public-at-large.

- The current rule omits a procedure for submitting a request. Section (c) of the revised rule provides a procedural process. Note that this draft section requires a person to "submit" rather than "file" a request, because the filing of a request with the court clerk could delay its transmission to the appropriate judge. In Maricopa and Pima counties, a person may submit an on-line request to the court's Public Information Officer or its Community Relations Officer, who will route it to the proper judge. In practice, these officers or the judge's staff promptly notify the parties of the request for coverage.

- Because the court usually schedules a trial date well in advance, section (c) of the revised rule requires a person to submit a request to cover a trial at least seven days before the trial starts, rather than two days as provided in the existing rule. A person must submit a request to cover any other proceeding forty-eight hours before the proceeding (compared to two days under the current rule), unless the court scheduled a proceeding less than seventy-two hours in advance, in which case a person must submit the request "sufficiently in advance of the proceeding as not to delay or interfere with it."

- Although section (i) of the proposed revisions retains a "presumptive limit" of one microphone and one audio recording device, or one video and one still camera, the judge conducting the proceeding has discretion under this section to approve a request for additional recording devices. Multiple cameras may produce a superior journalistic product without disrupting a proceeding.

- Rule 122 currently does not have a provision concerning coverage of a victim. Sections (e), (f), and (l) of the proposed revisions to Rule 122 do. These revisions acknowledge the special status of a victim, who may be neither a party nor a witness in a criminal proceeding.

- The revisions to Rule 122 allow use of a "personal audio recorder," but only after the operator notifies the court of the intended use. A "personal audio recorder" is one that is on, held by, or immediately next to the operator. As under the current rule, the judge has no authority under this proposed rule to forbid the use of a

personal audio recorder, but the notice requirement will make the court aware of when one is being used in the courtroom.

- The revised version re-organizes the rule. The re-organization includes placing sections of the rule in a sequential order, combining provisions, and eliminating duplicate text. Note that other rules in Chapter XII of the Supreme Court rules (the "Miscellaneous Provisions"), such as Rule 123, have helpful topic headings for each section, but Rule 122 currently has no section headings. Section headings are included in the Wireless Committee's revised version.

Recommendation 2: ***Adopt a new Supreme Court Rule 122.1 on the use of portable electronic devices.***

The Wireless Committee made an early decision that it would not recommend a policy that required court visitors to surrender their portable devices upon entry into the courthouse, or upon entry into a courtroom, although a few courts have attempted this. Surrendering devices at the door is incompatible with the philosophy expressed in the executive summary. Moreover, keeping track of surrendered devices would create a logistical nightmare for courthouse security. The members then considered where in the courthouse, and by whom, when, and how, wireless devices could be used. The members incorporated their conclusions in a proposed Supreme Court rule, identified as Rule 122.1, and entitled "Use of portable electronic devices."

Proposed Supreme Court Rule 122.1, contained in Appendix 2, consists of six sections. Section (a) sets out the purpose of this rule, which is to describe permissible uses of portable electronic devices by visitors to the courthouse. Section (b) defines three terms: "portable electronic device," "courthouse," and "courtroom."

Section (c) prohibits use of a portable electronic device for photography and recording in a "courtroom," except when authorized by a judge or as otherwise allowed under Rule 122. An early draft of Rule 122.1 had expanded this prohibition to the entire "courthouse." However, some Arizona courthouses are historic and invite photography, and it could be counterproductive if the rule required a judge to approve every visitor's request to take a photograph of something of architectural or historical interest. In addition, a prohibition of camera use in all areas of a courthouse might be difficult to enforce. However, the proposed rule states that a local court, by an administrative order, may prohibit or limit use of recording devices in other areas of the courthouse, such as at a filing counter.

During the vetting process for this rule, the Wireless Committee heard concerns about an earlier version of section (c). The former version would have allowed parties or members of the public to take photos of judges, court personnel, prosecutors, and victims outside

the courtroom. The Wireless Committee added language to section (c) that prohibits anyone from "knowingly" photographing or recording another person anywhere in the courthouse without that person's consent, except as allowed under Rule 122. Section (c) also provides that a violation of this section "presumptively obstructs the administration of justice and lessens the dignity of the court" to clarify that a violation is punishable by the contempt provisions Rule 33.1 of the Arizona Rules of Criminal Procedure. The members also drafted a proposed addition to the Bench Book regarding enforcement of contempt citations against those who take photos or make recordings in violation of the rule. (The proposed Bench Book addition, which is in Appendix 6, notes that a person's voluntary deletion of the photo or recording is the preferred resolution of a violation, and "the court should issue a contempt citation only as a last resort.") Section (c) requires that the court use reasonable means to advise the public of the prohibitions of this section.

Proposed Rule 122.1, section (d), concerns the use of a portable electronic device in the courtroom by a juror or by a witness. The rule provides that a juror may not use a portable electronic device while in the courtroom, or while in a jury room during deliberations. Because a juror may not use a portable electronic device during deliberations, this section requires the court to provide jurors with a court telephone number at which an emergency message may be left for a juror. A witness may use a portable electronic device in a courtroom while testifying only with permission of a judge, for example, pursuant to Rule 612 of the Arizona Rules of Evidence.

Section (e) applies to the use of devices by attorneys, parties, and members of the public while in the courtroom. This was a challenging section of the proposed rule because on the one hand, attorneys, parties, and members of the public can use devices in a courtroom productively, and without distracting others. On the other hand, some judges, especially those in limited jurisdiction courts where there are fewer attorneys and larger volumes of individuals in their courtrooms, believe that allowing use of devices undermines their control of the courtroom and poses potential security risks. They believe the rule should allow them to require that everyone turn their devices off when they enter the courtroom. Some courts in Arizona already have policies that require everyone, or everyone other than attorneys, to turn off their portable devices when entering a courthouse or courtroom.

The compromise provision of proposed section (e) is that any person, other than a juror or a witness, may use a device in a courtroom to retrieve and store information, to access the internet, and to send or receive messages or information. However, because public use of electronic devices in a high volume courtroom may be a hindrance to a judge's effective management of a calendar, or a particular courtroom's acoustics may easily transmit the sound of keystrokes, section (e) also provides that any use is subject to limits imposed by the judge. Because audible sounds create distractions, section (e) also states that a person

may not use a device to make or to receive telephone calls, or for other audible functions, while court is in session, without the court's express permission.

Section (f) permits anyone to use a portable electronic device within a courthouse, and outside a courtroom, except as provided by sections (c), (d), and (e). The proposed rule provides that any use of a device within the courthouse is subject to the authority of judges, court administrators, or court security officers to limit or to terminate activity that may be disruptive to court operations, or that may compromise courthouse security.

Recommendation 3: ***Revise the admonition to the jury, as set out in Recommended Arizona Jury Instruction ("RAJI') Preliminary Civil 9, RAJI Preliminary Criminal 13, and the Judicial College of Arizona (JCA) Bench Book. In conjunction with the admonition, the Wireless Committee recommends revisions to the jurors' oath, as prescribed in Ariz. R. Civ. P., Rule 47(a)(3) and Ariz. R. Crim. P., Rule 18.6(b). The Wireless Committee also recommends use of a "smart juror" card.***

The three components of this recommendation are the court's admonition to the jury, the jurors' oath, and a "smart juror" card. A revised admonition, a revised juror oath, and the "smart juror" card are in Appendix 3.

The Wireless Committee spent considerable time discussing the jury admonition because improper use of the new technology by a juror can result in a mistrial, which can cost the court and litigants substantial amounts of time and money. Rosalind Greene, an attorney and jury consultant, presented a study that found a number of verdicts challenged nationwide because of juror misuse of technology. As more jurors acquire new technology, the number of these challenges grows. Division One of the Court of Appeals issued an opinion in such a case in 2010, and another case was concluded in Division One on October 23, 2012 with a memorandum decision.[2]

Ms. Greene described four types of jurors who use the new technology. "Addicts" are compulsive users of the internet and social media; "rebels" will do the opposite of what courts ask them to do; "helpers" believe that being a good juror is finding out as much as possible about the case from extraneous sources; and "five-minutes-of-famers" desire to be the center of attention and seek special recognition. Ms. Greene suggested that the

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[2] In *State v Aguilar,* Division One of the Court of Appeals remanded the defendant's convictions for attempted first degree murder after jurors conducted internet research to define legal terms. 224 Ariz. 299, 230 P.3d 358 (App. 2010). In *State v Thompson*, Division One affirmed a conviction although a juror had done internet research revealing felony convictions of a co-defendant and a defense witness. No. 1-CA CR 11-0424, 2012 WL 3208682 (Ariz. App. Oct. 24, 2012).

court identify and excuse "addicts" early in the jury selection process. The other groups may respond favorably to instructions from the court about fairness, team effort, cooperation, and rationales for the rules of juror conduct. Ms. Greene said that admonitions to the jurors are the most effective method of preventing a juror's misuse of the internet and social media during a trial. She stressed three elements of effective admonitions: communication, repetition, and language.

Judges already have a trio of suggested admonitions, including: RAJI Preliminary Civil 9, RAJI Preliminary Criminal 13, and a third admonition found in the Bench Book. The civil RAJI makes only a brief reference to the internet, and even the recent criminal RAJI makes no mention of "friending."[3] These omissions coupled with Ms. Greene's comments led the Wireless Committee to discuss revising these existing admonitions. Based on its recent revisions, RAJI Criminal 13 became the template for the Wireless Committee's revised admonition.

The Wireless Committee saw no justification for using different admonitions in civil and criminal trials, and it recommends use of its revised admonition in both types of cases.[4] The Wireless Committee intends to submit its draft to the State Bar, which promulgates the RAJIs, for consideration by its civil and criminal jury instructions committees. The Wireless Committee also proposes submission of its draft to the Judicial College for inclusion in the next edition of the Bench Book.

The revisions go beyond updates that acknowledge new technology. The revisions also address the language of the admonitions.[5] The second sentence of RAJI Preliminary Civil 9 serves as a general illustration of this process. The instruction begins, "this admonition is designed to prevent jury tampering and the appearance of jury tampering." Leaving aside such issues as the RAJI's lack of a definition for jury tampering, the

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[3] In *Sluss v. Commonwealth of Kentucky*, an appellate court remanded a murder conviction based on post-verdict evidence that two jurors were Facebook "friends" with the victim's mother. No. 2011-SC-000318-MR, 2012 WL4243650 (Sept. 20, 2012).

[4] Rule 21.1, Arizona Rules of Criminal Procedure, states: "The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided."

[5] An instructive article on this subject is "Say What You Mean: Drafting Comprehensible Jury Instructions" in the February 2011 issue of Arizona Attorney. The article, written by Ms. Greene and her colleague, Jan Mills Spaeth, Ph.D., notes that "because of the excessive use of legal terminology, complex sentence structure and other communication flaws, jurors often misunderstand even commonly used patterned jury instructions."

members recognized that this admonition should begin with a message that jurors might respond to positively. The revised admonition begins with a constructive message about jurors sharing in the responsibility for a fair trial, and the Wireless Committee believes, the proposed admonition continues with a more productive tone throughout. An effective admonition is one in which jurors understand not only the words of the admonition, but also its underlying rationale. A successful admonition will persuade jurors to assume ownership for a fair trial.

The two current RAJIs have a specific list of don'ts, but fail to clearly explain the reasons why jurors may not do certain things. The revised admonition provides that explanation. One paragraph of the revised admonition provides four cogent reasons why jurors should not look for information about the case outside the courtroom. The revised admonition also uses simpler language than the RAJIs. For example, the existing RAJIs use terms such as "treatise," "prohibition," or "appearance of improper conduct," words that every juror may not comprehend. Likewise, the criminal admonition presently instructs jurors not to "consult any source such as a newspaper," and directs that they "do not engage in any conduct…." Jurors would better understand the admonition if the judge simply told them not to "read a newspaper" or "don't do anything…." The revised admonition is about the same length as the RAJIs currently in use.

It is unrealistic to believe that an admonition will prevent all juror misconduct. The admonition applies when jurors are in the courthouse, but it also applies when they are away from court and the temptations of technology and society are pervasive. However, the language, tone, and explanations of the proposed admonition provide jurors with a better understanding of their responsibilities, making it more likely they will remember and comply with the admonition, in and outside of the courthouse.

Ms. Greene also suggested a written pledge to help jurors remember to follow the admonition. A member of a workgroup that the Wireless Committee established to revise the admonition improved on this suggestion by recommending inclusion of the words "comply with the admonition" in the jurors' oath, which was adopted by the full Committee. Juror oaths are prescribed by Ariz. R. Civ. P., Rule 47(a)(3) and Ariz. R. Crim. P., Rule 18.6(b), and this recommendation will require the Wireless Committee to file a rule petition to add these words to the oath. The Wireless Committee recommends using the same oath for civil and criminal cases, rather than different oaths as the respective rules currently provide.

The Wireless Committee also recommends the use of something they have dubbed the "smart juror" card. Ms. Greene advised that not every juror absorbs the admonition by listening to it, and she suggested using another medium to deliver the admonition. The Wireless Committee created the "smart juror" card to harmonize with and to reinforce the revised admonition. The card is thin and laminated like a playing card, and it is

roughly the size and the shape of a smart phone. Color, text, and symbols on both sides of the card are used to emphasize concepts of the admonition. The Wireless Committee is aware that jurors receive the admonition in writing in black-and-white on letter-sized paper, along with the other instructions. However, the court could give a "smart juror" card to each trial juror when he or she is sworn, and a juror could carry it in a pocket, or use it as a bookmark, as a tangible, friendly and ongoing reminder of the admonition. The cards in quantity are about thirteen cents each, or less than two dollars per jury. If this minimal cost is prohibitive, a court could place a poster-sized reproduction of the card on a wall in its jury room.

In addition, the Wireless Committee has drafted proposed voir dire for inclusion in the Bench Book. The voir dire concerns the jurors' use of portable electronic devices, and the ability of individual jurors to follow the court's instructions limiting their use of these devices during their jury service. The proposed voir dire is in Appendix 7.

Recommendation 4: ***Consider revisions to the rules and jury instructions regarding the exclusion of witnesses. The rules and instructions on this subject are contained in Arizona Rules of Evidence, Rule 615; Ariz. R. Crim. P., Rule 9.3; RAJI Preliminary Civil 12 and Criminal 8; and the JCA Bench Book.***

Rule 615 of the Rules of Evidence provides in part that upon request of a party, the court must order the exclusion of a witness from the courtroom so that the witness "cannot hear other witnesses' testimony." Proposed Rule 122.1, discussed *supra*, would allow individuals in the courtroom, other than jurors and witnesses, to use their portable devices to send text messages or to blog while court is in session. An excluded witness could fully comply with Rule 615 if the witness was unable to "hear" the testimony of the other witnesses, yet violate the intent of the rule by reading text messages, social media posts, or blogs while waiting in the hallway or a witness waiting room.

Accordingly, the Wireless Committee has informally advised the Supreme Court's Advisory Committee on the Rules of Evidence, established by A.O. 2012-43, of this circumstance. The Wireless Committee also recommends that this anomaly be addressed by:

- The State Bar, for consideration by appropriate Bar committees of changes to Ariz. R. Crim. P., Rule 9.3 (exclusion of witnesses and spectators); RAJI Preliminary Civil 12 (exclusion of witnesses); and RAJI Preliminary Criminal 8 (exclusion of witnesses)

- The Judicial College, for consideration of changes to language in the Bench Book regarding exclusion of witnesses

Suggested changes to these provisions are in Appendix 4.

<u>Recommendation 5:</u> Consider revisions to RAJI Standard 7, the instruction to an excused alternate juror.

A trial judge gives RAJI Standard 7 to an excused alternate juror. While the instruction directs the excused alternate not to discuss the case, it omits any direction to the alternate juror about not looking for information concerning the case on the internet or elsewhere prior to the juror's complete discharge from jury service. The Wireless Committee recommends referral of this instruction to an appropriate jury instruction committee of the State Bar for revision. Suggested revisions are in Appendix 5.

<u>Recommendation 6:</u> Refer judicial ethics questions to the Judicial Ethics Advisory Committeee, and request a formal opinion from that committee.

As directed by A.O. 2012-22, the Wireless Committee considered several ethics questions which it deems appropriate for possible review by another appropriate committee, commission or body for future action.

Patricia A. Sallen, the Ethics Director of the State Bar, and Lynda Shely, the former Ethics Director, made presentations to the Wireless Committee in August concerning ethics issues that attorneys may encounter concerning the new technology and social media. While Ms. Sallen and Ms. Shely posed a variety of novel scenarios, they believe that Arizona's existing attorney ethics rules cover the scenarios presented by the new technology. Ms. Sallen and Ms. Shely encouraged attorneys to obtain continuing education for guidance in applying the existing rules to these situations, but the Wireless Committee members believe that there is no need to refer ethics questions to the State Bar at this time.

Judge Margaret Downie, Division One of the Court of Appeals and Chair of the Judicial Ethics Advisory Committee, and George Riemer, Executive Director of the Commission on Judicial Conduct, both serve on the Wireless Committee. They made presentations to the members in September regarding ethics issues arising from the new technology and social media that may be of concern to judicial officers and court staff. Although the existing rules probably address these issues, the Wireless Committee members believe that the judiciary would benefit from an omnibus advisory opinion that answers frequently asked questions on the most common scenarios involving use of social media. The Wireless Committee's letter to the Judicial Ethics Advisory Committee posing these ethics questions is contained in Appendix 8.

Comments on the Wireless Committee's recommendations

Staff presented the Wireless Committee's drafts concerning SCR 122, SCR 122.1, and the admonition, to three standing committees of the AJC: the Committee on Limited Jurisdiction Courts (twice), the Committee on Superior Court (twice), and the Commission on Victims in the Courts. At their second meetings, the LJC and COSC approved drafts of these documents. Comments were requested from COVIC, but it was not asked to take formal action. Staff also presented these three draft documents at a conference of the Presiding Judges, and at meetings of the Arizona Association of Superior Court Administrators and Limited Jurisdiction Courts Administrators Associations. The recommended text of these rules and the admonition, as shown in the appendix, reflects many of the suggestions and comments that were received during these presentations. Several judges statewide also provided informal input during the drafting process.

Consideration of Arizona statutes

Although not a charge under A.O. 2012-22, at the November meeting the members nonetheless discussed whether Arizona statutes covered two recently reported situations. A person posted on a website and claimed to be a sitting juror in an ongoing, high-profile murder case in Kansas; however, the poster was anonymous. In a federal case, a self-avowed neo-Nazi posted a jury foreperson's photo and home address on a white supremacy website. The Wireless Committee took no formal action concerning the adequacy of Arizona statutes in these and similar situations. However, there are several existing statutes in Title 13 that might apply to these fact situations, including A.R.S. §§ 13-1202 (threatening or intimidating); 13-2401 (personal information on the World Wide Web); 13-2802 (influencing a witness); 13-2805 (influencing a juror); 13-2916 (use of an electronic communication to terrify, intimidate, threaten, or harass); and 13-2921 (harassment). The contempt provisions of Rule 33.1 of the Arizona Rules of Criminal Procedure might also be applicable to a particular set of facts.

Continuation of the Wireless Committee's work

A.O. 2012-22 provides: "The Committee shall continue as long as necessary to complete its work, including the filing of any rule petition not later than January 2013." If the Arizona Judicial Council approves the Wireless Committee's recommendations to file rule petitions, the Wireless Committee will continue to review and respond to comments throughout the rule petition process.

The members of this Committee appreciate their opportunity to serve the Chief Justice and this Council.

Table of Recommended Actions

Item (subject to AJC approval):	***Wireless Committee will submit to:***		
	AZ Supreme Court	*Judicial Coll. of AZ*	*State Bar of AZ*
SCR 122 [revisions]: use of recording devices during a court proceeding	File a rule petition by January 10	Refer contempt additions to the JCA	
SCR 122.1 [new]: use of portable electronic devices	File a rule petition by January 10	Refer contempt additions to the JCA	
Bench Book: voir dire script		Refer voir dire to the JCA	
Ariz. R. Civ. P., Rule 47(a)(3): jurors' oath **Ariz. R. Crim. P, Rule 18.6(b):** jurors' oath	File a rule petition by January 10 File a rule petition by January 10		
RAJI Preliminary Civil 9: admonition **RAJI Preliminary Criminal 13:** admonition **Bench Book:** admonition		Refer to the JCA	Refer to SBA Comm. on Civil Jury Instructions Refer to SBA Comm. on Criminal Jury Instructions
Smart juror card: adjunct to the admonition	Refer to Court Services Division		
ARE, Rule 615: excluding witnesses	Refer to the Advisory Comm. on Rules of Evid		
Ariz. R. Crim. P., Rule 9.3: exclusion of witnesses and spectators			Refer to SBA Comm. on Criminal Practice and Proc.

RAJI Preliminary Civil 12 exclusion of witnesses; and **RAJI Preliminary Criminal 8** exclusion of witnesses **Bench Book:** exclusion of witnesses		Refer to the JCA	Refer to respective SBA Comms. on Civil and Crim. Jury Instructions
RAJI Standard 7: excused and alternate jurors			Refer to SBA Comms. on Civ. and Crim. Jury Instruct.
Ethical questions: judges	Submit a letter to the Judicial Ethics Advisory Comm.		
Ethical questions: attorneys			Not applicable

<u>Table of actions by subject area:</u>

- **Electronic devices:**

SCR 122 [revisions]: use of recording devices
SCR 122.1 [new]: use of portable electronic devices
Bench book: information regarding contempt under SCR 122 and 122.1

- **Voir dire:**

Bench Book: voir dire script

- **Admonition:**

Ariz. R. Civ. P., Rule 47(a)(3): juror oath
Ariz. R. Crim. P., Rule 18.6(b): juror oath
RAJI Preliminary Civil 9: admonition
RAJI Preliminary Criminal 13: admonition
Bench Book: admonition
Smart juror card: adjunct to the admonition
RAJI Standard 7: excused and alternate jurors

- **Exclusion of witnesses:**

ARE, Rule 615: excluding witnesses
Ariz. R. Crim. P., Rule 9.3: exclusion of witnesses and spectators
RAJI Preliminary Civil 12: exclusion of witnesses
RAJI Preliminary Criminal 8: exclusion of witnesses
Bench Book: exclusion of witnesses

- **Ethical questions:**

Letter: to the JEAC requesting an omnibus advisory opinion regarding the use of social media by judges and courtroom staff

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The rule revisions included in the appendix show additional text with underline, and deleted text with ~~strikethrough~~.

Appendix 1: Proposed revisions to Supreme Court Rule 122

"Clean" version (A mark-up version of the current rule follows the clean version):

Rule 122. Use of Recording Devices during a Court Proceeding

a. Purpose. This rule allows the use of recording devices during a court proceeding, subject to specified requirements and limitations.

b. Definitions. The following definitions apply in this rule. A term defined in the singular includes the plural.

1. A *"camera"* is any electronic or mechanical device used to photograph, record, or broadcast still or moving images.

2. A *"court proceeding"* is an event conducted in a courtroom. A court proceeding does not include an event conducted in judicial chambers, in anterooms, in rooms where jurors assemble or deliberate, or in other areas of the courthouse.

3. *"Cover"* and *"coverage"* refer to a person's use of a recording device during a court proceeding.

4. A *"person"* includes an individual and any organization except a court.

5. A *"personal audio recorder"* is any audio recording device that is on, held by, or immediately next to, a person who is operating the device.

6. A *"recording device"* is any electronic or mechanical apparatus and related equipment that is used to capture and store sound or images, or both, and from which a person can retrieve or broadcast sound or images. A camera, a smart phone, and an audio recorder are examples of recording devices.

c. Request to cover a court proceeding. A person who wishes to use a recording device during a court proceeding, other than a personal audio recorder as provided in section (j), must submit a written request to approve coverage. The person must submit the request to the judge who will conduct the proceeding, or to an office of the court designated by the presiding judge for receiving requests under this rule. The request must identify at a minimum the person who is submitting it, the case, the proceeding, and the date(s) of the proposed coverage. The submission of a request to cover a court proceeding provides a person with standing on the request, but it does not confer upon a person the status of a party to the case. If the specified proceeding is a trial, a person must submit a request at least seven calendar days before the trial date. If the proceeding is not a trial, a person must submit a request as soon as possible, and no less than forty-eight hours before the specified proceeding, to allow the judge to consider the request in a timely manner. However, if the court schedules a proceeding on less than seventy-two hours notice, a person must file the request sufficiently in advance of the proceeding as not to delay or interfere with it. The court will notify the parties of its receipt of a request for coverage. The

judge will promptly hold a hearing if the judge intends to deny the request or a portion of the request, or if a party objects to a request. A court may provide coverage of its own proceedings, and it is exempt from the requirements of section (c).

d. Time for a party to object to a request. A party waives an objection to coverage unless the party objects to the request in writing or on the record no later than the commencement of the specified proceeding, or the conclusion of a hearing held under section (c), whichever occurs first.

e. Factors a judge must consider; findings when a judge limits or denies a request for coverage. In deciding whether to approve a person's request to cover a court proceeding or a party's objection to coverage, the judge conducting the proceeding must consider the following factors:

(1) The impact of coverage upon the right of any party to a fair hearing or trial;

(2) The impact of coverage upon the right of privacy of any party, victim, or witness;

(3) The impact of coverage upon the safety and well-being of any party, victim, witness or juror;

(4) The likelihood that coverage would distract participants, or that coverage would detract from the dignity of or would disrupt a proceeding;

(5) The adequacy of the physical facilities of the court;

(6) The timeliness of the request pursuant to section (c) of this rule;

(7) Whether the person making the request is engaged in the dissemination of news to a broad community; and

(8) Any other factor affecting the fair administration of justice.

The judge conducting the proceeding may limit or deny coverage only after making specific, on-the-record findings that there is a likelihood of harm arising from one or more of the above factors, and that the harm outweighs the benefit of coverage to the public. A judge's decision to limit or to deny a request for coverage under this rule is reviewable only by special action.

f. Objection to coverage by a non-party victim or witness. An attorney who represents a non-party victim, or who calls a witness to testify, must notify that victim or witness of coverage of the court proceeding. A non-party victim or witness may object to coverage of his or her appearance or testimony at any time. A judge may grant the objection and prohibit coverage of the appearance or testimony of a particular non-party victim or witness after consideration of the factors in section (e) and upon a determination that coverage would have a greater adverse

impact upon that victim or witness or his or her testimony than other traditional methods of news reporting.

g. Manner of coverage. The judge conducting the proceeding will preserve the dignity of the proceeding by designating the placement of equipment and personnel for photographing, recording, or broadcasting the proceeding, and all equipment and personnel will be restricted to the designated area. Operators of recording devices may not move about the courtroom while court is in session. All persons and affiliated individuals engaged in the coverage must avoid conduct or dress that may detract from the dignity of the proceeding. The judge conducting the proceeding may order a restriction or cessation of coverage during a proceeding in furtherance of the interests of justice.

h. Equipment. A person must not install, move, or take recording equipment from the courtroom during a court proceeding. A person must hide wiring as much as possible, and wiring must not cause an inconvenience or a hazard. A person may connect equipment used to provide coverage to an existing courtroom electronic system, if possible, but a person must not connect equipment to a court's digital recording system without the express approval of the judge conducting the proceeding. A person must not bring flash devices, strobe lights or other artificial lights of any kind into the courtroom. If a person wishes to use additional standard light fixtures or higher wattage light bulbs, additional microphones, or other modifications or improvements concerning lighting or sound, the person must submit this information in the request under section (c). The judge may direct whatever modifications or improvements deemed necessary. The judge may not require that public funds be used to make or to maintain any such modifications or improvements. Microphones, cameras, and other equipment used for coverage must meet current industry standards, so that the recording devices are as unobtrusive and as equivalent in technical quality and sensitivity as recording devices in general use by major broadcast stations in the community where the courtroom is located. Recording devices that produce distracting sounds are not permitted. Any questions concerning whether particular equipment complies with this rule will be resolved by the presiding judge or a designee.

i. Number of recording devices; pooling. A request submitted under section (c) may ask the judge to approve audio coverage, or coverage by video camera or by still camera. The presumptive limits are one microphone and recording device for audio coverage, or one video camera and one still camera, but the judge conducting the proceeding has discretion to approve a person's request to use additional recording devices. If a judge approves requests by more than one person to cover a court proceeding, those persons must pool their resources to limit recording devices in the courtroom to the number approved by the judge. Those persons have the responsibility to settle their own disputes, to facilitate pooling as necessary, and to implement procedures that meet the approval of the assigned judge prior to any coverage and without disruption to the court.

j. Personal audio recorders; required notice to the court. Any person including a journalist may use a personal audio recorder during a court proceeding without the prior approval of the judge conducting the proceeding, but only after the person has given notice of that intended use to the judge or to the judge's staff prior to using the device. The use of a personal audio recorder

pursuant to this section may not be obtrusive, distracting, or otherwise prohibited, and use is subject to the prohibitions of section (m)(2) of this rule. Anyone who wishes to audio record a court proceeding with a device that is not on the person, as specified in section (b)(5), must submit a request pursuant to section (c) of this rule.

k. Recording not admissible as evidence. No video, photograph, or audio reproduction of a judicial proceeding that is obtained pursuant to this rule or Rule 122.1 may be used to modify or supplement the official court record of that proceeding, nor is it admissible at that or any subsequent proceeding unless it is offered for another purpose allowed under the Arizona Rules of Evidence.

l. Informal approval of camera use. Notwithstanding other provisions of this rule, a person may verbally request, and a judge conducting the proceeding may verbally approve, use of a camera in a courtroom to photograph or to record a celebratory or ceremonial court proceeding. A person must obtain the express permission of the presiding judge or a designee to use a camera in any courtroom when that court is not in session.

m. Prohibitions. Recording or broadcasting is not permitted in the following circumstances.

> **1. Jurors.** Cameras must be placed to avoid showing jurors in any manner. Audio or video recordings or broadcasts of juror interviews, statements, or conversations are also prohibited, except that a juror may expressly consent to an interview after the jury has been discharged.
>
> **2. Attorney conferences.** Audio recordings or broadcasts of bench conferences between a judge and counsel, or off-the-record conferences between attorneys and their clients, or between attorneys, anywhere in the courthouse are prohibited.
>
> **3. Other areas of the courthouse.** A person whose request under this rule has been granted may not photograph, record in, or broadcast from, locations in a courthouse where a court proceeding is not being conducted, without the judge's express approval.
>
> **4. Juvenile proceedings.** Photographing, recording, or broadcasting of juvenile court proceedings is only as allowed by Arizona law, or as provided in section (l).
>
> **5. Criminal proceedings.** In a criminal proceeding, a judge on his or her own motion may order that no one may photograph, record, or broadcast the victim in the courtroom. The judge may alternatively order that video coverage must effectively obscure the victim's face and identity, or that there may only be audio coverage of the victim's testimony.

n. Use of a recording device prohibited without approval. Use of a recording device during court proceedings is prohibited except as allowed by this rule. A court must use reasonable means to inform the public of these prohibitions.

o. Other governing law. The law generally applicable to inclusion or exclusion of the press or the public at court proceedings or during the testimony of a particular witness applies to persons who submit a request or notice under this rule. Nothing in this rule alters the obligation of any attorney to comply with the provisions of the Arizona Rules of Professional Conduct governing trial publicity.

p. Appellate courts. For coverage of proceedings in the Arizona Supreme Court and Courts of Appeal, any reference in this rule to the "*judge conducting the proceeding*" or to the "*presiding judge*" means the Chief Justice of the Arizona Supreme Court or the Chief Judge of the Court of Appeals, as applicable.

Mark-up version of the current rule:

Rule 122: ~~Electronic and Photographic Coverage of Public Judicial~~ Use of Recording Devices during a Court Proceedings

~~Electronic and still photographic coverage of public judicial proceedings conducted by a judicial officer during sessions of court may be permitted in accordance with the following guidelines:~~

~~**(a)** No electronic or still photographic coverage of juvenile court proceedings shall be permitted, except that such coverage may be permitted in adoption proceedings for the purpose of memorializing the event, with the agreement of the parties to the proceeding and the court.~~

a. Purpose. This rule allows the use of recording devices during a court proceeding, subject to specified requirements and limitations.

b. Definitions. The following definitions apply in this rule. A term defined in the singular includes the plural.

1. A *"camera"* is any electronic or mechanical device used to photograph, record, or broadcast still or moving images.

2. A *"court proceeding"* is an event conducted in a courtroom. A court proceeding does not include an event conducted in judicial chambers, in anterooms, in rooms where jurors assemble or deliberate, or in other areas of the courthouse.

3. *"Cover"* and *"coverage"* refer to a person's use of a recording device during a court proceeding.

4. A *"person"* includes an individual and any organization except a court.

5. A *"personal audio recorder"* is any audio recording device that is on, held by, or immediately next to, a person who is operating the device.

6. A *"recording device"* is any electronic or mechanical apparatus and related equipment that is used to capture and store sound or images, or both, and from which a person can retrieve or broadcast sound or images. A camera, a smart phone, and an audio recorder are examples of recording devices.

c. Request to cover a court proceeding. A person who wishes to use a recording device during a court proceeding, other than a personal audio recorder as provided in section (j), must submit a written request to approve camera coverage. The person must submit the request to the judge who will conduct the proceeding, or to an office of the court designated by the presiding judge for receiving requests under this rule. The request must identify at a minimum the person who is submitting it, the case, the proceeding, and the date(s) of the proposed coverage. The submission of a request to cover a court proceeding provides a person with standing on the

request, but it does not confer upon the person the status of a party to the case. If the specified proceeding is a trial, the person must submit a request at least seven calendar days before the trial date. If the proceeding is not a trial, the person must submit a request as soon as possible, and no less than forty-eight hours before the specified proceeding, to allow the judge to consider the request in a timely manner. However, if the court schedules a proceeding on less than seventy-two hours notice, the person must file the request sufficiently in advance of the proceeding as not to delay or interfere with it. The court will notify the parties of its receipt of a request for coverage. The judge will promptly hold a hearing if the judge intends to deny the request or a portion of the request, or if a party objects to a request. A court may provide coverage of its own proceedings, and it is exempt from the requirements of section (c).

d. Time for a party to object to a request. A party waives an objection to coverage unless the party objects to the request in writing or on the record no later than the commencement of the specified proceeding, or the conclusion of a hearing held under section (c), whichever occurs first.

~~**(b)** Electronic and still photographic coverage of public judicial proceedings other than the proceedings specified in paragraph (a) above may be permitted in the discretion of the judge giving due~~ **e. Factors a judge must consider; findings when a judge limits or denies a request for coverage.** In deciding whether to approve a request to cover a court proceeding, the judge conducting the proceeding must consider~~ation to~~ the following factors:

~~(i)~~ (1) The impact of coverage upon the right of any party to a fair hearing or trial;

~~(ii)~~ (2) The impact of coverage upon the right of privacy of any party, victim, or witness;

~~(iii)~~ (3) The impact of coverage upon the safety and well-being of any party, victim, witness or juror;

~~(iv)~~ (4) The likelihood that coverage would distract participants, or that coverage would detract from the dignity of or would disrupt ~~the~~ a proceeding~~s~~;

~~(v)~~ (5) The adequacy of the physical facilities of the court ~~for coverage~~;

~~(vi)~~ (6)The timeliness of the request pursuant to ~~sub~~section ~~(f)~~ (c) of this ~~R~~rule; ~~and~~

(7) Whether the person making the request is engaged in the dissemination of news to a broad community; and

~~(vii)~~ (8) Any other factor affecting the fair administration of justice.

The judge conducting the proceeding may limit or prohibit coverage only after making specific, on-the-record findings that there is a likelihood of harm arising from one or more of the above factors, and that the harm outweighs the benefit of coverage to the public. A judge's decision to limit or to deny a request for coverage under this rule is reviewable only by special action.

~~**(c)**~~ **f. Objection to coverage by a non-party victim or witness.** ~~The judge may limit or prohibit electronic or still photographic coverage only after making specific, on-the-record findings that there is a likelihood of harm arising from one or more of the above factors that outweighs the benefit to the public of camera coverage. **(d)** Electronic and still photographic~~ An attorney who represents a non-party victim, or who calls a witness to testify, must notify that victim or witness of coverage of the court proceeding. A non-party witness or victim may object to coverage of his or her appearance or testimony at any time. A judge may grant the objection and prohibit coverage of the appearance or testimony of a particular non-party victim or witness ~~may be prohibited if the judge determines~~ after consideration of the factors in section (e) and upon a determination that ~~such coverage~~ coverage would have a greater adverse impact upon ~~the~~ that victim or witness or his or her testimony than ~~non-electronic and non-photographic coverage would have~~ other traditional methods of news reporting. ~~**(e)** The law generally applicable to inclusion or exclusion of the press or public at court proceedings or during the testimony of particular witness shall apply to the coverage hereunder. The exercise of the judge's discretion in limiting or precluding electronic or still photographic coverage shall be reviewable only by special action.~~

~~**(f)** Requests by the media for coverage shall be made to the judge of the particular proceeding sufficiently in advance of the proceeding or portion thereof as not to delay or interfere with it. Unless the judicial proceeding is scheduled on less than three days notice, the request to tape or photograph a proceeding must be made no less than two days in advance of the hearing. The judge shall notify all parties and witnesses of the request. If there is any objection to a request for camera coverage or an order allowing electronic or still photographic coverage, the court shall hold a hearing promptly.~~

~~**(g)** Objections of a party to coverage must be made on the record prior to commencement of the proceeding or portion thereof for which coverage is requested. Objections of a non-party witness to coverage of his or her appearance or testimony may be made to the judge at any time. Any objection not so made will be deemed waived.~~

~~**(h)** Nothing herein shall alter the obligation of any attorney to comply with the provisions of the Arizona Rules of Professional Conduct governing trial publicity.~~

~~**(i)** Individual journalists may use their personal audio recorders in the courtroom, but such usage shall not be obtrusive or distracting and no changes of tape or reels shall be made during court sessions. In all other respects, news reporters or other media representatives not using cameras or electronic equipment shall not be subject to these guidelines.~~

~~**(j)** No media film, videotape, still photograph or audio reproduction of a judicial proceeding shall be admissible as evidence in such proceeding or in any retrial or appeal thereof.~~

~~**(k)** Coverage of jurors in a manner that will permit recognition of individual jurors by the public is strictly forbidden. Where possible, cameras should be placed so as to avoid photographing jurors in any manner.~~

~~**(l)** Absent express permission of the court, there shall be no audio recording or broadcasting of conferences in the court building between attorneys and their clients, between attorneys, of jury interviews or in any part of the court building where a judicial proceeding is not being conducted.~~

~~**(m)** It shall be the responsibility of the media to settle disputes among media representatives, facilitate pooling where necessary, and implement procedures which meet the approval of the judge of the particular proceeding prior to any coverage and without disruption to the court. If necessary the media representatives shall elect a spokesperson to confer with the court.~~

~~**(n)** No more than one television camera and one still camera mounted on a tripod, each with a single camera operator, shall be permitted in the courtroom for coverage at any time while court is in session. The broadcast media shall select a representative to arrange the pooling of media participants. The court shall not participate in the pooling agreement.~~

~~**(o)**~~ **g. Manner of coverage.** The judge conducting the proceeding ~~of a particular proceeding shall, in a manner which~~ will preserve~~s~~ the dignity of ~~the~~ the proceeding~~,~~ by designating~~e~~ the placement of equipment and personnel for ~~electronic and still photographic~~ ~~coverage of~~ photographing, recording, or broadcasting ~~that~~ the proceeding, and all equipment and personnel ~~shall~~ will be restricted to the designated area ~~so designated. Whenever possible, media equipment and personnel shall be placed outside the courtroom. Videotape recording equipment not a component part of a television camera shall be placed outside the courtroom. To the extent possible, wiring shall be hidden, and in any event shall not be obtrusive or cause inconvenience or hazard. While court is in session, equipment shall not be installed, moved or taken from the courtroom nor shall photographers or camera o~~ Operators of recording devices may not move about the courtroom while court is in session. ~~**(p)**~~ All persons and affiliated individuals engaged in the coverage ~~permitted hereunder shall~~ must avoid conduct or dress ~~which~~ that may detract from the dignity of the proceedings~~s~~. The judge conducting the proceeding may order a restriction or cessation of camera coverage during a proceeding in furtherance of the interests of justice.

~~**(q)**~~ **h. Equipment.** A person must not install, move, or take equipment from the courtroom during a court proceeding. A person must hide wiring as much as possible, and wiring must not cause an inconvenience or a hazard. A person may connect ~~If possible, media~~ equipment used to provide coverage ~~shall be connected~~ to an existing courtroom ~~sound~~ electronic system~~s~~, if possible, but a person must not connect equipment to a court's digital recording system without the express approval of the judge conducting the proceeding. ~~No~~ A person must not bring flash ~~bulbs~~ devices, strobe lights or other artificial lights of any kind ~~shall be brought~~ into the courtroom. ~~by the media for use in coverage of a proceeding~~. ~~Where the addition of~~ If a person wishes to use additional standard light fixtures or higher wattage light bulbs, ~~additional standard light fixtures,~~ additional microphones, or other modifications or improvements ~~are sought by the media, the media, through their spokesperson, shall make their recommendations~~ concerning lighting or sound, the person must submit this information in the request under section (c). ~~to t~~The ~~presiding~~ judge ~~of the Superior Court~~, ~~who~~ may direct whatever modifications or improvements deemed necessary~~.~~, ~~and~~ The judge may not require that public funds be used to

make or to maintain ~~A~~any such modifications or improvements ~~shall be made and maintained without public expense~~. ~~**(r)** Television or still cameras which produce distracting sound shall not be permitted. In this regard, the presiding judge may consider a non-digital still camera acceptable if accompanied by a device that effectively muffles camera sounds. **(s)**~~ Cameras and microphones used ~~in the~~ for coverage ~~permitted hereunder shall~~ must meet ~~the "state of the art." A camera or microphone shall be deemed to meets the "state of the art" when equal in unobtrusiveness,~~ current industry standards, so that they are as unobtrusive and as equivalent in technical quality and sensitivity ~~to~~ as equipment in general ~~usage~~ use by ~~the~~ major broadcast stations in the community ~~in which~~ where the courtroom is located. Cameras that produce distracting sounds are not permitted. ~~**(t)**~~ Any questions concerning whether particular equipment complies with ~~these guidelines shall~~ this rule will be resolved by the presiding judge ~~of the Superior Court~~ or a designee.

i. Number of cameras; pool cameras. A request submitted under section (c) may ask the judge to approve audio coverage, or coverage by video camera or by still camera. The presumptive limits are one microphone and recording device for audio coverage, or one video camera and one still camera, but the judge conducting the proceeding has discretion to approve a person's request to use additional recording devices. If a judge approves requests by more than one person to cover a court proceeding, those persons must pool their resources to limit cameras in the courtroom to the number approved by the judge. Those persons have the responsibility to settle their own disputes, to facilitate pooling as necessary, and to implement procedures that meet the approval of the assigned judge prior to any coverage and without disruption to the court.

j. Personal audio recorders; required notice to the court. Any person including a journalist may use a personall audio recorder during a court proceeding, without the prior approval of the judge conducting the proceeding, but only after the person has given notice of that intended use to the judge or to the judge's staff prior to using the device. The use of a personal audio recorder pursuant to this section may not be obtrusive, distracting, or otherwise prohibited, andf use is subject to the prohibitions of section (m)(2) of this rule. Anyone who wishes to audio record a proceeding with a device that is not on the person, as specified in section (b)(5), must submit a request pursuant to section (c) this rule.

k. Recording not admissible as evidence. No video, photograph, or audio reproduction of a judicial proceeding that is obtained pursuant to this rule or Rule 122.1 may be used to modify or supplement the official court record of that proceeding, nor is it admissible at that or any subsequent proceeding unless it is offered for another purpose allowed under the Arizona Rules of Evidence.

l. Informal approval of camera use. Notwithstanding other provisions of this rule, a person may verbally request, and a judge conducting the proceeding may verbally approve, use of a camera in a courtroom to photograph or to record celebratory or ceremonial court proceeding. A person must obtain the express permission of the presiding judge or a designee to use a camera in any courtroom when that court is not in session.

m. Prohibitions: Recording or broadcasting is not permitted in the following circumstances.

1. Jurors: Cameras must be placed to avoid showing jurors in any manner. Audio or video recordings or broadcasts of juror interviews, statements, or conversations are also prohibited, except that a juror may expressly consent to an interview after the jury has been discharged.

2. Attorney conferences: Audio recordings or broadcasts of bench conferences between a judge and counsel, or off-the-record conferences between attorneys and their clients, or between attorneys, anywhere in the courthouse are prohibited.

3. Other areas of the courthouse: A person whose request under this rule has been granted may not photograph, record in, or broadcast from, locations in a courthouse where a court proceeding is not being conducted, without the judge's express approval.

4. Juvenile proceedings: Photographing, recording or broadcasting of juvenile court proceedings is only as allowed by Arizona law, or as provided in section (l).

5. Criminal proceedings: In a criminal proceeding, a judge on his or her own motion, or may order that no one may photograph, record, or broadcast the victim in the courtroom. The judge may alternatively order that video coverage must effectively obscure the victim's face and identity, or that there may only be audio coverage of the victim's testimony.

n. Use of a recording device prohibited without prior approval. Use of a recording device during court proceedings is prohibited except as allowed by this rule. A court must use reasonable means to inform the public of these prohibitions.

o. Other governing law: The law generally applicable to inclusion or exclusion of the press or the public at court proceedings or during the testimony of a particular witness applies to persons who submit a request or notice under this rule. Nothing in this rule alters the obligation of any attorney to comply with the provisions of the Arizona Rules of Professional Conduct governing trial publicity.

~~**(u)** To facilitate implementation of this rule, the presiding judge of the Superior Court may appoint an advisory committee to make recommendations regarding improvements affecting media coverage of judicial proceedings.~~

~~**(v)**~~ **p. Appellate courts:** ~~In the case of~~ For coverage of proceedings in the Arizona Supreme Court and Courts of Appeal, any references ~~herein~~ in this rule to the *"judge conducing the proceeding"* or to ~~"judge of the particular proceeding" or~~ the *"presiding judge ~~of the Superior Court~~"* ~~shall~~ means the Chief Justice of the Arizona Supreme Court or the Chief Judge of the Court of Appeals, as ~~the case may be~~ applicable.

Appendix 2: Proposed Supreme Court Rule 122.1 [new]

Rule 122.1: Use of portable electronic devices [New]

a. Purpose. This rule describes permissible uses of portable electronic devices in a courthouse and in a courtroom by attorneys, parties, witnesses, jurors, and members of the public.

b. Definitions. Words have the following meaning in this rule:

1. A *"portable electronic device"* is a mobile device capable of electronically storing, accessing, or transmitting information. The term encompasses among other things, a transportable computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone, or other wireless phone; a camera and other audio or video recording devices; a personal digital assistant (PDA); other devices that provide internet access; and any similar items.

2. A *"courthouse"* includes all areas within the exterior walls of a court building, or if the court does not occupy the entire building, that portion of the building used for the administration and operation of the court.

3. A *"courtroom"* is an area of a courthouse or other building where a judge or other judicial officer conducts judicial proceedings.

c. Photography and audio or video recording. No one may use a portable electronic device for photographs or for audio or video recording in a courtroom, unless that use was approved by the judge conducting a proceeding in that courtroom, or is otherwise allowed under Rule 122. By local administrative order, a court may prohibit or limit photography or recording in other areas of a courthouse. A party or a member of the public may not knowingly photograph or record another person anywhere in the courthouse without the person's consent. A violation of this section presumptively obstructs the administration of justice, and lessens the dignity and authority of the court. A court must use reasonable means to advise the public and court participants of prohibitions under this section.

d. Jurors and witnesses. A juror may not use a portable electronic device while present in a courtroom during a trial, or in a jury room during the jury's deliberations and discussions concerning a case, and jurors must turn off their portable electronic devices while in those locations at those times. When a jury is deliberating, the court must provide jurors with a court telephone number at which an emergency message may be left for a juror. While in a courtroom, a witness must silence any portable electronic device, and may use a device while testifying only with permission of a judge.

e. Attorneys, parties, and members of the public. Any person, other than a juror or a witness, may use a portable electronic device in a courtroom to retrieve or to store information, to access the internet, and to send and receive text messages or information. A portable electronic device may not be used, without permission of the court, to make or to receive telephone calls or for

other audible functions while court is in session, and attorneys, parties, and members of the public must silence portable electronic devices while in the courtroom. Any allowed use of a portable electronic device is subject to the authority of a judge to prohibit activity that may be disruptive or distracting to a court proceeding, or that may otherwise be contrary to the administration of justice.

f. Use of a portable electronic device outside a courtroom. Except as provided in sections (c), (d) and (e), any person may use a portable electronic device within a courthouse and outside of a courtroom, subject to the authority of judges, court administrators, or court security officers to limit or terminate activity that may be disruptive to court operations or that may compromise courthouse security.

<u>Appendix 3: Proposed revisions to the jury admonition, with revisions to the jurors' oath and the "*smart juror*" card</u>

1. Proposed language for the admonition (for use in civil and criminal cases):

All participants in a trial have a responsibility to follow rules that ensure a fair trial. I will now explain certain rules you must follow while serving as a juror, which I will call "*the admonition.*"

First, please wear your juror badge at all times in and around the courthouse so everyone will know you are a juror. Wearing a juror badge is important because it identifies you as a juror to others. A juror badge signifies that you cannot discuss this case with anyone, or let anyone discuss this case with you, or let anyone discuss the case with other people if you are present. You must not speak or communicate about this case with anyone until after it is completely over and I have discharged you from service on this jury. "*Anyone*" includes your family, friends, coworkers, acquaintances, and even strangers. I have given the lawyers and parties the same instruction about not speaking with you jurors while this case is going on, so do not think they are being unfriendly to you if they do not speak with you outside the courtroom.

You must not communicate with anyone about your experiences as a juror, or about the evidence, the lawyers, the parties, the witnesses, me, or the other jurors. You may not tell other people what you think about this case, and you may not ask other people what they think about it. All you can tell someone is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about this case until it is completely over. I will discharge you from your duties as a juror when this case is completely over, and at that time, you may speak freely with anyone about this case. Until then, it is your duty not to speak with any person, or allow any person to speak with you, or to be present while other people are speaking, on any subject related to this trial.

In a criminal case such as this, you, as a juror, may not discuss the evidence with other jurors until you retire to deliberate on your verdict. Therefore, during breaks and recesses, whether you are in the jury room or not, you must not discuss any aspect of the case with each other until I submit the case to you for your deliberations at the end of this trial.

[Alternative: In a civil case such as this, you may discuss the evidence with other jurors during recesses. However, you may do this only if you agree to do so, only when all of you are present in the jury room with the door closed, and only if you reserve judgment about the outcome of this case until you start your deliberations after receiving my final instructions on the law.]

Electronic devices are things that store and retrieve information, give you access to the internet, or allow you to send or receive messages. Examples of electronic devices include smart phones, cell phones, cameras, notebooks, tablets, or laptops, and other computers and communication tools. You may use electronic devices in the courthouse, but there are limitations. Electronic devices may be used during breaks as long as the use is completely unrelated to the trial and your duties as a juror. You cannot use your electronic devices for any reason while you are in the

courtroom or while you are deliberating in the jury room. Please make sure that you have turned off your electronic devices while you are in the courtroom and during deliberations. You cannot take notes with your electronic devices; you may only take notes on the paper notepad the court has provided to you.

When I say that you must not speak with anyone about this case, this also applies to electronic communications. You must not communicate about the case electronically, on the internet, or by any other form of application or "*app.*" You must not communicate about this case on Facebook, Twitter, or on any other social media site, through blogs, or by e-mail, text, or instant messaging. While this case is going on, you must not attempt to friend, find, or look up on a social media site anyone who is connected with this case in any way, including me, my court staff, the attorneys, parties, witnesses, or other jurors.

You must not look outside the courtroom for knowledge about this case at any time. If you have a question or need additional information, submit your request to me in writing. I will answer your question or provide the requested information if I can. However, you cannot use Google or any other internet website, or newspapers, magazines, dictionaries, books, maps, television, or radio to find out more. There may be names, words, or subjects that come up during this trial that you want to look up. You cannot do that. You must not search for information about the parties, witnesses, locations, events, facts, or legal issues involved with this case. You must decide this case only on the evidence that you see and hear in this courtroom. This rule may seem strange, because you use these tools on a daily basis, and you may think that looking for information is helpful, but doing this could jeopardize the trial, and it will violate your oath as a juror. Here are the reasons for this rule.

First, I am responsible for deciding what evidence you have, and my court staff carefully records the testimony of witnesses, marks exhibits, and maintains minutes to keep track of evidence. Every juror must decide this case on the body of evidence produced in court. I am not suggesting that there is other information for you to find outside the courtroom; but you will have all of the information that the law allows you to have for deciding the case. Deciding the case based on information that one of you finds elsewhere could jeopardize the parties' right to a fair trial. Second, the rules of evidence exist so that what you see and hear meets legal requirements. Information available outside the courtroom may be unreliable, and because I would not know what you might find from an outside source, I would have no way to determine whether that information is accurate. Third, the parties have a right to examine witnesses, which is one of the fundamental principles of our legal system. If you obtain information outside this courtroom, you will be ignoring the right of the parties to examine the source or accuracy of that information. Finally, if a party has not met their burden of proof, you may not do research and try to fill that gap.

In a few minutes, when you take your oath (or affirmation) as a trial juror, you will agree to comply with this admonition. If any juror violates the admonition, I may have to declare a mistrial and start the trial over again, beginning with calling a new jury. A mistrial is unfair to the parties, the attorneys, and the witnesses, all of whom must come back to court a second time. A mistrial is also financially costly to the taxpayers. If anyone has tried to contact you

concerning the case, or if you believe that another juror has violated the admonition, please send a note to me immediately. All of us have the responsibility to conduct this trial fairly.

Form your opinions only after you have had an opportunity to discuss this case with each other in the jury room. Do not form final opinions about any fact or about the outcome of this case until you have heard and considered all of the evidence presented in court, the closing arguments, and the rest of the instructions. Keep an open mind during the trial.

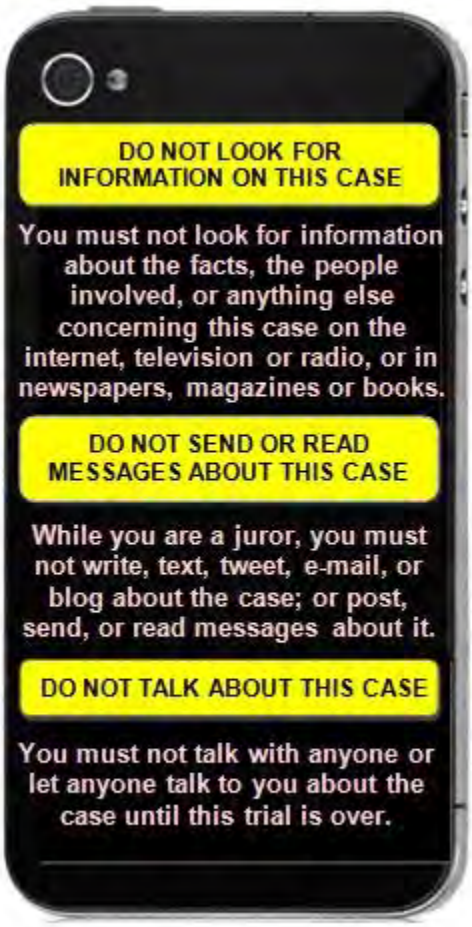
Before a recess, I may say, "*Remember the admonition"* without repeating the entire admonition that I have just given to you. I do this as a reminder to keep this admonition in mind at all times. Even if I do not recite the words "*Remember the admonition"* before a recess, you must remember and obey the admonition until this trial is completely over.

2. The oath: Proposed language for the oath (for use in civil and criminal cases):

> *"(I swear) (*or *I affirm) that I will give careful attention to the proceedings, abide by the court's instructions, comply with the admonition, and render a verdict in accordance with the law and evidence presented to me (so help me God)." [Omit the last four words if the juror takes an affirmation rather than an oath.]*

3. *Smart juror* card (or jury room poster): [Optional: Present each juror with a "smart juror" card and say: "*Here is something for you to keep that will help you to remember the admonition."*]

Remember the Admonition
Every juror has a responsibility to ensure a fair trial.
Because your verdict must be based on evidence presented in court ...
PLEASE FOLLOW THESE RULES:


DO NOT LOOK FOR INFORMATION ON THIS CASE
You must not look for information about the facts, the people involved, or anything else concerning this case on the internet, television or radio, or in newspapers, magazines or books.
DO NOT SEND OR READ MESSAGES ABOUT THIS CASE
While you are a juror, you must not write, text, tweet, e-mail, or blog about the case; or post, send, or read messages about it.
DO NOT TALK ABOUT THIS CASE
You must not talk with anyone or let anyone talk to you about the case until this trial is over.

Appendix 4: Proposed revisions to Ariz. R. Crim. P., Rule 9.3; RAJI Preliminary Civil 12 and Criminal 8

Rule 9.3: Exclusion of witnesses and spectators

a. Witnesses. The court may, and at the request of either party shall, exclude prospective witnesses from the courtroom during opening statements and the testimony of other witnesses. The court shall direct the witnesses to refrain from reading anything about the case, such as tweets, blogs, or e-mail messages, which someone might send from inside the courtroom while the trial is continuing. The court shall also direct ~~them~~ the witnesses not to communicate with each other until all have testified. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, the person shall not be excluded from the courtroom. Once a witness has testified on direct examination and has been made available to all parties for cross-examination, the witness shall be allowed to remain in the courtroom unless the court finds, upon application of a party or witness, that the presence of the witness would be prejudicial to a fair trial. Notwithstanding the foregoing, the victim, as defined in Rule 39a, Rules of Criminal Procedure, shall have the right to be present at all proceedings at which the defendant has such right.

b. Spectators. All proceedings shall be open to the public, including representatives of the news media, unless the court finds, upon application of the defendant, that an open proceeding presents a clear and present danger to the defendant's right to a fair trial by an impartial jury. A complete record of any closed proceedings shall be kept and made available to the public following the completion of trial or disposition of the case without trial.

c. Protection of witness. The court may, in its discretion, exclude all spectators except representatives of the press during the testimony of a witness whenever reasonably necessary to prevent embarrassment or emotional disturbance of the witness.

d. Investigator. If an exclusion order is entered, both the defendant and the prosecutor shall nevertheless be entitled to the presence of one investigator at counsel table.

RAJI Civil Preliminary 12: Exclusion of Witnesses

The rule of exclusion of witnesses is in effect and will be observed by all witnesses until the trial is over and a result announced. This means that all witnesses will remain outside the courtroom during the entire trial except when one is called to the witness stand. They will wait in the areas directed by the bailiff unless other arrangements have been made with the attorney who has called them. The rule forbids witnesses from reading anything about the case, such as tweets, blogs, or e-mail messages that someone might send from inside the courtroom, before all of the parties have rested. The rule also forbids witnesses from telling anyone but the lawyers what they will testify about or what they have testified to. If witnesses do talk to the lawyers about their testimony, other witnesses and jurors should avoid being present or overhearing.

The lawyers are directed to inform all their witnesses of these rules and to remind them of their obligations from time to time as may be necessary. The parties and their lawyers should keep a careful lookout to prevent any potential witness from remaining in the courtroom if they inadvertently enter.

RAJI Preliminary Criminal 8, Exclusion of Witnesses

The text is identical to RAJI Civil Preliminary 12.

Appendix 5: Proposed revisions to RAJI Standard 7

RAJI Standard 7: Excused Alternate Jurors

[*Name of alternate juror*], your name has been drawn by lot as an alternate juror. While you are physically excused from your service as a juror at this time, there remains a possibility you may be called back to court to deliberate should one of the other jurors be unable to do so. The bailiff will retain your notes [and notebook] for your use if you are called back. The admonition continues to apply to you. Please do not ~~discuss~~ communicate about this case with anyone, or let anyone talk to you about it, until you have been notified a verdict has been reached or the jury has been discharged. And please do not look for any information about the case on the internet or anywhere else until you've been advised that the case is concluded.

Appendix 6: Proposed additions to the Bench Book regarding contempt

Supreme Court Rule 122 allows photography and recording during a court proceeding, but only after submission of a request to, and approval by, the judge conducting the proceeding. An exception is a "personal audio recorder," as defined in the rule, which may be used without the judge's approval, but only after the operator notifies the court that he or she will be using the device. Even when the judge approves the request or after a person provides appropriate notice, photography and recording is subject to certain conditions (for example, a person may not take photos or video of jurors, or victims, nor may bench conferences be audio recorded). The rule also requires that a court use reasonable means to inform the public of these prohibitions.

Supreme Court Rule 122.1 governs the use of portable electronic devices in the courthouse. This rule reiterates that no one may use a portable electronic device for photographs or for audio or video recording in a courtroom, unless the judge approved this use under Rule 122, or Rule 122 otherwise allows the use. Rule 122.1 also provides that a court may prohibit or limit photography or recording in other areas of a courthouse (for example, at a filing counter) by local administrative order. The rule further provides that a party or a member of the public may not photograph or record another person anywhere in the courthouse without the person's consent. The rule recites that a violation of this section presumptively obstructs the administration of justice, and lessens the dignity and authority of the court. This language mirrors Rule 33.1 of the Rules of Criminal Procedure. The rule requires a court to use reasonable means to advise the public and court participants of the rule's prohibitions.

Contempt scenarios may arise under these two rules in the following ways:

- A person may take an unauthorized photograph, or make an unauthorized recording, inside the courtroom, in the presence of a judge. The court may punish this conduct as direct contempt.

- A party or a member of the public may take a photograph, or make a recording, inside the courthouse but outside the courtroom, of another person without the person's consent.

As to the second situation, a finding of direct contempt may also be appropriate under the authority of *Hirschfeld v Superior Court*, 184 Ariz. 208, 908 P.2d 22 (1995):

> *"…the court has the right and the duty to protect litigants, witnesses, attorneys and jurors from misbehavior and harassment while they are in or near the courtroom, whether they are arriving, waiting, or departing. Conduct like Hirschfeld's, because it impinges on that right and duty, lessens the dignity and authority of the court. There are a number of cases which support this conclusion."*

Generally, the primary objective that the court wishes to accomplish is the voluntary deletion of the photograph or recording by the person who took the photo or who made the recording. Most court visitors will abide by a judge's request that they delete a photo or an audio or video

recording, and in most circumstances, the person's cooperation should obviate any need for the court to cite the person. This is by far the preferred resolution; the court should issue a contempt citation only as a last resort.

In cases where the person voluntarily, cooperatively, and promptly deletes the photo or video:

1) The court should assure that the person has deleted the photo or recording from the device that took it. The court may verify deletion of the photo or recording if the person deletes it in the presence of the judge, a member of the judge's staff, or a law enforcement officer.

2) The court should assure that the person has deleted the photo or recording from any backup server or *"cloud"* that may store a secondary copy of the image. The person should also do this in the presence of an officer of the court or a law enforcement officer.

3) The judge should inquire whether the person has transmitted the photo or recording to another individual by e-mail, or whether the person has posted the photo or recording on a social media or other site. If the person confirms that he or she has done so, the court should order the person to delete the photo or recording from these other locations. This may involve the person recalling an e-mail, taking a photo or recording down from a blog or social media page, or other appropriate action.

4) The court should also advise the person that he or she will be held in contempt of court if the court later determines that the photo or recording still exists, i.e., if the person made false representations to the court about his or her complete deletion of the electronic file.

The court has a more difficult situation when the person refuses to delete the photo or video. Criminal contempt is an option if the objective is punishment. Civil contempt is also an option if the objective is remedial, i.e., if the objective is to compel the person to delete the photo or recording. The court may order the person to surrender the device to assure deletion.

Other factors that the judge might consider in deciding whether to issue a contempt citation and whether to impose criminal or civil contempt in situations involving unauthorized photography or recording include:

- whether the person was aware of a sign advising of the prohibition, or whether the photo or recording was taken in ignorance of the prohibition

- whether a photo or video recording was taken of an inanimate object or of an individual

    - If taken of an inanimate object, whether it shows anything that might compromise courthouse security

- If taken of an individual, the effect upon the individual (e.g., embarrassment, intimidation, harassment), and the motivation and intent of the person who took it.

Appendix 7: Proposed additions to the Bench Book regarding voir dire

Note:

- Here is an initial instruction to the venire, and proposed voir dire. You should give the initial instruction to the panel near the beginning of the voir dire, before the panel takes its first recess.

- Trial judges frequently develop their own verbiage and individual style during voir dire, so what follows are suggestions rather than requirements. Individual variation and follow-up questions are encouraged, as you deem appropriate.

Initial instruction: I will give you a few rules or instructions that you must follow even at this early stage. I am giving you these rules because every one of us – including my staff, the lawyers, you and me, and everyone else involved in this case -- has a responsibility to ensure a fair trial.

Now that this trial has started, you must not communicate with anyone about your experiences in this courtroom. You must not talk about this case, about what type of case this is, or about anything you may learn about the case. You must not talk about the case in person or on the phone, and you must not communicate about the case in writing or electronically. You also must not use your computers or electronic devices to find out any information about this case, or about the people or the issues involved in the case. I will explain this further, but right now…

- … Is there anyone who would be unable to follow this instruction?

Voir dire: If you become a juror on this case, you must not talk about or discuss this case with anyone, other than to tell someone that you are on a jury, and to give them the estimated schedule of the trial. That includes not talking to each other about the case during your breaks [in a civil case, you should modify this language as provided in Civil Rule 39(f)], and it includes not talking to your friends, family members, and others about the case. "Not talking about the case" requires that you may not even mention the names of the lawyers, the parties, witnesses, or anyone else involved in the case. In order to avoid even the appearance of improper conduct, the law forbids any of the participants in this trial – the lawyers, the parties, any spectator or visitor, any witnesses, and also including me –from talking to you jurors, except through my staff, or as I permit while we are all in this courtroom.

- Do you all agree not to discuss this case with anyone until the trial is over?

When I say you must not talk about or discuss the case, I am referring to talking in person or on the phone, as I mentioned before; but I also mean discussing the case in writing or

electronically. When I say electronically, I am including e-mail messaging, texting, blogging, tweeting, "facebooking," and any other form of electronic communication.

- How many of you utilize electronic communications for personal use, or at work?

You must not tweet, blog, e-mail, text, post, talk, or communicate in any other way about this case, or the issues or the people involved in this case, while you are serving as a juror. During this trial, you must not use or attempt to use Facebook or another social media website to friend or to post about me, or to friend or to post about my court staff, the attorneys, the parties, witnesses, other participants, or any other jurors or potential jurors.

- Do you all agree not talk to or communicate with anyone about this case, or about any of the people or circumstances involved in the case, until the trial is over?

While you are in the courtroom, you must turn your cell phones, smart phones, laptops, Blackberries, or any other electronic device off - not on vibrate, not on silent, but off -- or you must leave your device in the jury room. You may use those devices during breaks or recesses, but for personal reasons only, and not for anything having to do with the facts, people, or issues involved in this case.

- Is there anyone who would be unable to follow this instruction?

- How many of you have cell phones or another electronic device with you?

- How many of you are able to access the internet right now?

- Have you all turned off your cell phone or any other electronic device?

You may not do your own investigation or independent research to find information about this case. You may not look up or research anyone or anything having to do with this case in the newspaper, in a book, using Google or another internet site, or by using any other available resource. If any of you attempt to use information that you find outside the courtroom, it will cause the trial to come to a screeching halt, the case will most likely have to be tried all over again by a different jury, and you may face significant penalties for your behavior.

The reason for this requirement is that the trial process only works if each side knows exactly what evidence you have, and what law you are applying to the facts you find. Evidence is information, including testimony from witnesses and exhibits that I allow in

court. I provide the law to you in my instructions. You cannot consider any information from any outside source.

- Is there anyone who would be unable to follow this instruction?

If you are selected to sit as a juror on this case, would any of you be unable or unwilling to return a verdict based only on the evidence presented at trial?

- As jurors, although you must not conduct your own investigation or independent research on the internet or anywhere else, you will be able to ask questions in this courtroom.

- Could you follow that instruction?

If you are selected to serve as a trial juror in this case, is there anyone who would be unable to follow any of the rules I have just given to you?

Appendix 8: Letter to the Judicial Ethics Advisory Committee

Draft letter to the Judicial Ethics Advisory Committee

December __, 2012

Hon. Margaret Downie
Chair, Judicial Ethics Advisory Committee
1501 West Washington Street
Phoenix, Arizona 85007

Re: Wireless Committee's request for an Advisory Opinion

Dear Judge Downie:

Chief Justice Berch established the Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings (the *"Wireless Committee"*) in March 2012 by the entry of Administrative Order 2012-22. This Order directed the Wireless Committee, among other things, to identify to the Judicial Ethics Advisory Committee (the *"Advisory Committee"*) any ethical issues arising from this new technology. As a member of the Wireless Committee, you have first-hand knowledge of these issues, but here is a summary.

Judges in Arizona are adapting to, and in many instances embracing, new technology, including social media. Some estimates suggest that half of Arizona judges are already using social media, commonly Facebook, but also Twitter, LinkedIn, Google, and other sites. Facebook users can *"like"* or *"friend"* other users, while those on Twitter can *"follow"* other users.

During their study of judges' use of social media, members of the Wireless Committee learned that other jurisdictions have reached different answers to the same ethics questions. For example, a Florida Court of Appeal in *Domville v. State*, case number 4D12-556, Sept. 5, 2012, agreed with its Judicial Ethics Advisory Committee, that

> *"…when a judge lists a lawyer who appears before him as a 'friend" on his social networking page this 'reasonably conveys to others the impression that these lawyer 'friends' are in a special position to influence the judge."*

The appellate court held that Domville's allegations of *"friending"* were sufficient to *"create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial."* The Court of Appeal therefore disqualified the trial judge.

Less than a week before the *Domville* opinion, a Utah Informal Advisory Opinion had reached a different conclusion. On a virtually identical scenario, the Utah opinion, number 12-01, August 31, 2012, concluded that a judge might allowably be *"friends"* with lawyers who appear before the judge:

> *"Being friends with someone is not a violation of the Code of Judicial Conduct. Furthermore, the designation of someone as a 'friend' on a website such as Facebook does not indicate that the person is a friend under the usual understanding of the term. Many Facebook users have hundreds and even thousands of 'friends.' Whether someone is truly a friend depends on the frequency and the substance of the contact, and not on an appellation created by a website for users to identify those who are known to the user."*

Does Arizona adopt the Florida or the Utah view, or does it draw the line elsewhere? Specifically:

> (1) May a judge be *"friends"* or accept *"friend"* requests from lawyers who appear before the judge?
>
> (2) If a judge is a *"friend"* with a lawyer on Facebook, does that require the judge to recuse himself or herself from the lawyer's cases?
>
> (3) Do the ethical rules allow a judge to identify himself or herself on Facebook, by words or by photographs, as a judge?
>
> (4) Do the ethical rules allow a judge to be a *"friend"* to an elected official, or to a candidate for political office?

The first two pages of Utah Advisory opinion 12-01 included the four questions above, as well as almost twenty related questions. The Wireless Committee incorporates those other questions by reference. The Wireless Committee believes that the Advisory Committee may combine its answers to these other questions rather than state them separately because the questions raise intertwined issues. The Advisory Committee may also wish to consider ethics opinions from other states. The Ohio Supreme Court's Board of Commissioners on Grievances and Discipline issued Advisory Opinion 2010-7 (2010); and Tennessee's Judicial Ethics Committee recently released Advisory Opinion No. 12-01 (October 23, 2012.)

The Wireless Committee poses these same questions to the Advisory Committee with regard to judicial employees. Would the Advisory Committee's responses be different for a judicial employee versus a judge? An Arizona court employee recently posted a story concerning a citizen who wanted to pay a court fine in pennies. Other Arizona court employees have posted stories on Facebook pages about promotions, or terminations of court staff, before Human Resources was able to notify the involved employees. What are the ethical considerations in these scenarios? A question was recently raised about how a well-known court administrator could post anything on Facebook, if everyone in the community was aware of the administrator's position with the court and even if it was not explicitly mentioned, the individual's relationship with the court was inherent in every post. What determines when someone identifies himself or herself as a judicial employee? Is it possible, appropriate, or necessary for a court to have a social media policy for court employees?

The Wireless Committee believes that the issuance of an omnibus advisory opinion will greatly assist Arizona judges in applying the Code of Judicial Conduct to their use of new technology, particularly social media. Your advisory opinion could be a valuable adjunct in educating judges and judicial employees on these frequently asked questions.

Thank you for your assistance.

Yours truly,

By: _____
On behalf of the Wireless Committee

Appendix 9: List of materials considered by the Wireless Committee

- **Opinions**

Star Publishing v Bernini, 2 CA-SA 2011-0095, Arizona, January 27, 2012

Stoddard v Donahoe, 224 Ariz. 152, 228 P.3d 144, Div One, 2010

USA v Lawson, #10-4831, 4th Circ, 2012

Commonwealth of Massachusetts v Werner, No. 11-P-368, May 2, 2012

Domville v Florida, Fourth District Court of Appeal, No. 4D12-556, September 5, 2012

Juror Number One v Superior Court (Royster), Third Appellate District, C067309, California, May 31, 2012

- **Miscellaneous Arizona Sources**

Pima County Superior Court: Request for Camera in the Courtroom under Rule 122 (webpage)

Email from AZAudit re: Rule 122 request (Pima County)

Pima County memo to jurors and prospective jurors regarding use of electronic devices

Exemplar Maricopa County minute entries regarding cameras in the courtroom

Materials on Wendell, including the Bench Book and RAJIs

- **Miscellaneous State Sources**

Supreme Court of Arkansas Administrative Order No. 6(c), July 2011

"Security: Prohibition on Cellular Telephones and other Personal Communication Devices in the New Castle County [Delaware] Courthouse," November 2005

Courthouse Decorum Order: *Illinois v Balfour*, April 2012

Decorum Order: *Pennsylvania v Sandusky*, May 2012

Rules proposed by the Pennsylvania Criminal Procedural Rules Committee, January 2012
Massachusetts Supreme Judicial Court Rule 1:19, 2012

Maryland Judicial Ethics Committee, Advisory Opinion 2012-7

San Diego County Bar Association, Legal Ethics Opinion 2011-2, May 24, 2011

New York City Bar, Formal Opinion 2012-2: Jury Research and Social Media

Utah Ethics Advisory Committee, Informal Opinion 12-01, August 31, 2012

Supreme Court of Florida Order Number SC 10-51, In Re: Standard Jury Instructions in Criminal Cases, Report Number 2010-01; and Standard Jury Instructions in Civil Cases, Report No. 2010-01, October 21, 2010

- **Law Reviews**

"Google, Gadgets, and Guilt: Juror Misconduct in the Digital Age," University of Colorado Law Review, Winter 2012 (Author: Thaddeus Hoffmeister)

"The Courts Are All a 'Twitter': The Implications of Social Media Use in the Courts," Valparaiso University Law Review, Fall 2011 (Author: Emily M. Janoski-Haehlen)

"Ensuring an Impartial Jury in the Age of Social Media" Duke Law and Technology Review, Vol. 11, 2012 (Authors: Hon. Amy J. St. Eve and Michael A. Zuckerman)

"Juror Misconduct in the Age of Social Networking," FDCC Quarterly, Winter 2012 (Authors: Michael K. Kiernan and Samuel E. Cooley)

"Social Networking and Judicial Ethics" St. Mary's Journal on Legal Malpractice and Ethics (Author: Craig Estlinbaum)

"Somebody Poisoned The Jury Pool: Social Media's Effect on Jury Impartiality," Texas Wesleyan Law Review [publication is pending] (Author: Kristin Brown)

Various articles, Reynolds Courts & Media Law Journal, 2011 and 2012, including

> "Worlds Collide: The Digital Native Enters the Jury Box" (Author: Judge Dennis Sweeney)
>
> "That's what 'Friend' is For? Judges, Social Networks, and Standards for Recusal (Author: Genelle Belmas)
>
> "Untangling the Web: How Courts Should Respond to Juries Using the Internet for Research" (Author: Gareth Lacy)
>
> "Say Cheese: Cameras and Bloggers in Wisconsin's Courtrooms" (Author: Stacy Blasiola)

"Jury Instructions for the Modern Age: A 50-State Survey of Jury Instructions on Internet and Social Media" (Author: Eric Robinson)

- **Policies and Reports**

"Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees," prepared by the Committee on Codes of Conduct, Judicial Conference of the United States, April 2010

"Model Policy on Access and Use of Electronic Portable Devices in Courthouses and Courtrooms," Media Law Research Center, 2010

"Principles and Practices for Electronic Devices," prepared by the Special Subcommittee for Electronic Devices and Approved by the Judicial Council of the Ninth Circuit (February 25, 2010)

"Jurors' Use of Social Media During Trials and Deliberations: A Report to the Judicial Conference Committee on Court Administration and Case Management," Federal Judicial Center, November 2011

"Final Report: Judicial Council Study Committee on Technology Brought into the Courtroom," Utah State Courts, April 10, 2012

"Proposed Model Jury Instructions: the Use of Electronic Technology to Conduct Research on or Communicate about a Case," prepared by the Judicial Conference Committee on Court Administration and Case Management, June 2012

"Jury Instructions Cautioning Against Use of the Internet and Social Networking" American College of Trial Lawyers, September 2010

"2012 New Media Survey" Conference of Court Public Information Officers

"Juror and Jury Use of New Media: A Baseline Exploration," National Center for State Courts Perspectives on State Court Leadership Series, 2012 (Authors: Paula Hannaford-Agor, David B. Rottman, Nicole L. Waters)

- **Magazine and News Articles**

"Are Tweeters or Googlers in Your Jury Box?" Arizona Attorney, February 2010 (Authors: Rosalind Greene and Jan Mills Spaeth, Ph.D.)

"Most Federal Judges Warn Jurors about Social Media," The Third Branch, March 2012

Article, "Model Jury Instructions for the Digital Age," February 28, 2011 (Author: Prof. Thaddeus Hoffmeister)

"Ruling: Justice court judge's jailing of woman 'egregious'." Salt Lake City Tribune, August 2, 2012)

"Invasions of Privacy" National Law Journal, July 23, 2012

"Can You Hear Me Now? Issues and Policy Considerations for Cell Phones and Other Electronic Devices in the Courts" The Court Manager, Vol. 25 (Author: Nora Sydow)
"Ethics Classes Ordered for Lawyers Seen Reading Text Message on Judge's Phone," August 14, 2012

ABA Journal articles:

"Law Student Who Wrote to Federal Judge Sues Over Subsequent 'Unreasonable' Search of Her Cell Phone," July 24, 2012 (Author: Martha Neil)

"Where the Buck Stops: Lawyers Need to Verify All the Nice Things Being Said About Them Online," August 1, 2012 (Author: G.M. Filisko)

"Seduced: For Lawyers, the Appeal of Social Media Is Obvious. It's Also Dangerous," February 1, 2011 (Author: Steven Seidenberg)

"Report: More Smartphone Owners than Cell Phone Owners Report Privacy Breaches," September 6, 2012 (Author: Terry Carter)

"Judge Orders Newspaper to ID Claimed Juror Who Commented Online during Trial over Attorney's Murder," November 1, 2012 (Author: Martha Neil)
"Conviction Is Reinstated for Neo-Nazi Who Posted Juror's Photo and Address," October 31, 2012 (Author: Debra Weiss)

"Expect Jail Time, Judge Tells Prospective Juror Who Googled Murder Defendant, Flouting Written Order," October 11, 2012 (Author: Martha Neil)

"Facebook Friends and Judicial Ethics," Ifrah Law, February 15, 2011

"The Ethics of Trial by Facebook," Pittsburgh Legal Back Talk, May 8, 2012 (Author: Cliff Tuttle)

"12 Social Media Ethics Issues for Lawyers" Solo Practice University, March 11, 2010 (Author: Susan Cartier Liebel)

"Judges, Attorneys Debate Cameras in the Courtroom," The Blog of Legal Times, March 28, 2012

"Social Media and the Ethical Court Employee," National Association of Court Managers, Volume 26, Issue 1 (Author: Norman H. Meyer, Jr.)

"Blogging by Judicial Office Holders [England and Wales]," August 2012

"Woman Arrested for Posting Undercover Cop's Picture on Facebook," Security Today, October 29, 2012 (Author: L. Page)

George Zimmerman and Social Media (webpage)

"Trial by Social Media in Australia Prompts Clash over Accused Murderer," Media Shift, October 11, 2012 (Author: Julie Posetti)

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
ESTABLISHMENT OF THE	)	Administrative Order
COMMITTEE ON THE IMPACT OF	)	No. 2012 – 22
WIRELESS MOBILE TECHNOLOGIES	)	
AND SOCIAL MEDIA ON COURT	)	
PROCEEDINGS	)	
	)	

New and affordable wireless mobile technologies have caused an unprecedented growth in the number of hand-held "smart" devices, laptops, and tablets used in this country. These technologies are shaping how we communicate, shop, bank, work, and inform and educate ourselves.

These devices also provide immediate access to information. Using social media sites such as Facebook, Twitter, and LinkedIn, information may be shared with business colleagues, clients, friends, and families. Mobile and wireless devices may be accessed nearly anywhere and anytime for email, phone and video calls, text messages, internet browsing, taking pictures and videos, research, blogging, and posting to social media sites.

The Judiciary uses technology to make courts more efficient, productive, and accessible. However, judges face unique challenges as they balance due process rights of parties and defendants with legitimate and sometimes necessary personal and professional uses of electronic devices in the courtroom and the courthouse. Guidance on balancing these sometimes competing interests through rules, policies, code sections, and jury instructions is needed.

New technologies present new security challenges as well. Arizona courts have rules governing cameras in the courtroom. Most rules allow media cameras in the courtroom with the judge's permission. Today, many devices such as laptops, cell phones, and tablets can take photos and videos. In Arizona, Supreme Court Rule 122 forbids photographic or video coverage of jurors in a manner that permits recognition of individual jurors by the public. Additionally, Rule 122 permits a judge to "limit or prohibit electronic or still photographic coverage… [if] there is a likelihood of harm arising…." The safety of those who participate in the judicial process is essential to serving the citizens and doing justice in all cases. Rule 122 may need revision to provide additional guidance to judges and other court personnel on how to respond appropriately to legitimate concerns about the use of cameras or other recording devices in the courtroom or the courthouse. Social media also raises ethical questions for judges and court personnel. By its design, social media provides a forum for dialogue between and among those who are invited or, of their own volition, choose to participate in an electronic conversation.

Facebook "friends" or Twitter "followers" can be as few as several to as many as hundreds or tens of thousands depending on the person, the cause, or business. There are times when the personal and professional lives of judges and court personnel intersect, online, with the lives of litigants, witnesses, jurors, and lawyers in the community they serve. Rules and codes of ethical conduct address ordinary circumstances related to friendships, acquaintances, and such. But existing rules and code sections do not specifically address whether ethical constraints or obligations to disclose relationships apply to social media sites.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the Committee on the Impact of Wireless, Mobile Technologies and Social Media on Court Proceedings ("Committee") is established as follows:

1. **Purpose**: The Committee shall review current Supreme Court rules, the Arizona Code of Conduct for Judicial Employees, the Arizona Code of Judicial Administration, jury instructions, and any other authority it deems appropriate and prepare recommendations that

(a) Propose Supreme Court rules, code sections, policy provisions, or jury instructions it believes necessary or appropriate to provide direction to court employees on the use of wireless mobile technology by lawyers, jurors, media, witnesses, and the public attending or participating in court proceedings;

(b) Propose rules, code sections, or policy provisions that will provide direction to judges, court security officers, and personnel on possession and use of technology with the capability to take photos and electronically record videos by court participants and those attending court proceedings; and

(c) Identify ethical questions that should be addressed by the Judicial Ethics Committee, the Judicial Conduct Commission, or any other appropriate committee of the Supreme Court.

The Committee also shall suggest judicial officer and court staff training to implement its recommendations.

2. **Membership**: The individuals listed in Appendix A are appointed as members of the Committee. The Committee shall continue as long as necessary to complete its work, including the filing of any rule petition not later than January 2013. The Chief Justice may appoint additional members and extend the expiration date of the Committee, if necessary.

3. **Meetings**: Committee meetings shall be scheduled at the discretion of the Chair. All meetings shall comply with the Arizona Code of Judicial Administration § 1-202: Public Meetings.

4. **Reports:** The Committee shall submit its report and recommendations to the Arizona Judicial Council not later than November 30, 2012.

5. **Staff**: The Administrative Office of the Courts shall provide staff for the Committee and shall assist the Committee in developing recommendations and in preparing any necessary reports and proposed Supreme Court rule or code changes.

Dated this 7th day of March, 2012.

_____
REBECCA WHITE BERCH
Chief Justice

ATTACHMENT: Appendix A

APPENDIX A

MEMBERSHIP LIST
COMMITTEE ON THE IMPACT OF WIRELESS, MOBILE TECHNOLOGIES AND SOCIAL MEDIA ON COURT PROCEEDINGS

Chair
Hon. Robert M. Brutinel
Arizona Supreme Court

Members

General Jurisdiction Judges
Representative from Maricopa
Hon. Janet Barton

Representative from Pima
Hon. Scott Rash

Representative from Non-Metro County
Hon. James Conlogue
Cochise County

Limited Jurisdiction Courts
Justice Court Judge
Hon. Dan Dodge
Highland Justice Court, Maricopa County

Municipal Court Judge
Hon. Eric Jeffery
Assistant Presiding Judge
Phoenix Municipal Court

Court Administrator
Marla Randall
Superior Court/Limited Jurisdiction Court Administrator, Navajo County

Media Representative/Public Members
David Bodney
Steptoe & Johnson LLP

Robin J. Phillips
Web Managing Editor
Arizona State University
Reynolds Center for Business Journalism

Clerk of the Superior Court and Arizona Judicial Council Representative
Hon. Michael Jeanes
Clerk of Superior Court in Maricopa County

State Bar Representative
Joe Kanefield

Jury Commissioner
Kathy Pollard
Jury Commissioner
Pima County

Commission on Judicial Conduct
George A. Riemer
Executive Director

Judicial Ethics Advisory Committee
Hon. Margaret Downie
Court of Appeals, Division 1, Chair
Maricopa County

Court Security Representative
Robert Lawless
Court Security Manager
Superior Court in Mohave County

Court Public Information Officer
Karen Arra
Court Public Information Officer
Superior Court in Maricopa County

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2012	_X_ Formal Action/Request __ Information Only __ Other	ACJA 6-202.01: Adult Intensive Probation Evidence-Based Practices

FROM:

Kathy Waters, Division Director, Adult Probation Services Division

DISCUSSION:

Proposed revision will:
1) Add supervision contact levels for adult probation departments utilizing the waiver (A.R.S.13-919).
2) Add criteria for the AOC to consider in granting a waiver request.
3) Eliminate redundancy and consolidate sub sections, which had been repeated through the code section.

Revised code section was presented to the Committee on Probation on October 5, 2012, and the Committee on Superior Court on November 2, 2012. Both committees voted to approve the code section as written.

RECOMMENDED COUNCIL ACTION:

Approve as written.

Comments and Responses to ACJA Section 6-202.01: Adult Intensive Probation Evidence-Based Practices

PARAGRAPH	COMMENT	RESPONSE
Section L. 2. o. Program Operations	The intensive probation officer shall then address the remaining treatment or counseling areas in descending order. Is this descending order per the assessment score? Or, the next area that the defendant is experiencing problems in?	This is not new verbiage and has been in the Evidence-Based Practices Adult Probation code sections. Probationer Officers should use the results of assessments and direct knowledge from supervising the offenders and contacting collateral sources to determine the appropriate order or priority of treatment, counseling, education, and other ancillary services and interventions.
Section N. 2. Minimum Supervision Requirements	The probation department shall establish and document minimum intensive supervision requirements for intensive probationers incarcerated in jail. Each probation department shall provide, in writing to each intensive probation officer, the minimum intensive supervision requirements established for intensive probationers incarcerated in jail and furnish training on adherence to those requirements. Code has not required contacts with defendants in custody unless they were on work furlough. Is this talking about defendants serving flat time? Or work furlough?	This is not new verbiage and has been in the ACJA IPS sub-section. Departments are to establish and document minimum supervision requirements for all incarcerated offenders (even those serving flat time) on Intensive probation. The Adult Probation Services Division recommends, at the bare minimum, that department policies require one face-to-face contact with the probationer while in custody for the purposes of completing a Review and Acknowledgement of Conditions of Probation and for release planning (e.g., appropriate residence upon release, when, where, and to whom to report, etc).

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 2: Adult Services
Section 6-202.01: Adult Intensive Probation Evidence-Based Practices

Sections A though K – No changes.

L~~M~~. Program Operations.

1. Each probation department shall develop:

    a. Policies and procedures that aim to reduce offender risk and the likelihood of future criminal behavior that are consistent with the principles of evidence-based practices.

    b. Policies and procedures which require probation officers providing intensive supervision to use the results of the standardized assessment, as well as any other relevant information, when developing a case plan.

    c. Policies and procedures which require that once every 180 days the supervising intensive probation officer administer the standardized reassessment and develop a new case plan.

    d. Policies and procedures that require probation officers to utilize graduated responses of consequences and incentives to address violation behavior and promote positive behavioral change.

    e. Policies and procedures which require supervising intensive probation officers to monitor intensive probationer compliance, behavioral changes and level of risk and request the court modify an intensive probationer's level of supervision when behavior and compliance with conditions of intensive probation have been achieved. Documentation regarding the compliance factors and justification for a requested level change shall be maintained in the intensive probationer's case record. A.R.S. § 13-917(A) provides:

        > The adult probation officer shall periodically examine the needs of each person granted intensive probation and the risks of modifying the level of supervision of the person. The court may at any time modify the level of supervision of a person granted intensive probation, or may transfer the person to supervised probation or terminate the period of intensive probation pursuant to A.R.S. § 13-901, subsection E.

    f. Policies and procedures regarding the alcohol and drug testing of persons on intensive probation. The procedure shall address the methods used to select intensive probationers for testing, the frequency of testing, and the type of test to be administered.

g. Policies and procedures by which accurate and timely records of the completion of community restitution hours are maintained for each intensive probationer. Credit toward court -ordered community restitution requirements are awarded on the basis of actual hours completed unless authorized by the court.

h. Protocols for working with the office of the clerk of the court to establish a process by which supervising intensive probation officers are provided with accurate and timely information concerning collections.

i. Policies and procedures to ensure the collection of monies owed as a condition of intensive probation. Each probation department and intensive probation team shall immediately address any arrearage. Each probation department and intensive probation team shall also encourage the intensive probationer's payment of other assessments, such as child support or traffic fines, ordered by any court.

j. A written policy concerning the monitoring of intensive probationers' compliance with court-ordered or disclosed prescription medications for mental health or public health concerns. This policy shall include protocols to ensure routine and timely communication between the supervising intensive probation officer and physician regarding the intensive probationer's compliance with dosage requirements.

k. Policies and procedures to ensure the accurate and timely recording of information on persons placed on intensive probation in the ACJIS maintained by the Arizona department of public safety. Members of intensive probation teams shall respond to each arrest notification received through ACJIS or through any law enforcement officer.

l. Supervision guidelines that are directed toward achieving desired outcomes that include, but are not limited to the reduction of the offender recidivism and criminogenic factors and will ensure that the majority of intensive probation supervision resources are dedicated to high risk probationers in order to successfully complete their term of probation and promote positive behavioral changes. Supervision guidelines shall include the following considerations:

(1) Supervision is tailored to the risks, needs and strengths presented by the individual probationer as determined by the standardized assessment;
(2) Supervision monitoring and intervention strategies are to involve no greater deprivations of liberty or property than are reasonably necessary to address sentencing purposes. Supervision programs, surveillance, and strategies that are utilized shall be the least intrusive means necessary to promote public safety and supervision goals;
(3) Initial and subsequent supervision planning shall develop specific goal-directed objectives to be accomplished by the probationer during the term of supervision and the strategies that the officer will use to monitor compliance and promote the accomplishment of those objectives. Supervision contacts shall be integral to implementing the overall supervision strategies, have a purpose that is directly related to case objectives and the probationer's level and type of risk;

(4) High risk cases require the concurrent implementation of multiple intervention strategies that apply the skills from a variety of disciplines to address the level and type of risk presented by the individual probationer, build on a probationer's strengths, and provide probationers with incentives to change;

(5) Document changes in a probationer's circumstances throughout the period of probation and actively engage in assessing the impact of any changes on the level and type of supervision. Officers shall independently assess a probationer's circumstances through field and collateral contacts at a level proportional to the issues in the individual case;

(6) Responses to noncompliance shall be timely, realistic and escalating; and shall include elements designed to both control and correct noncompliance; and

(7) The intensity and frequency of supervision activities shall be reduced over time for stable, compliant probationers who are meeting their supervision objectives.

2. Each intensive probation officer or team shall:

a. Administer the standardized assessment within 30 days of a probationer's placement on probation or initial release from custody if an assessment was not completed prior to sentencing;

b. Re-evaluate the adequacy and applicability of the court-ordered conditions of probation as part of the ongoing assessment and planning process and, if applicable, petition the court for modifications;

c. Utilize the results of the standardized assessment to establish a level of supervision and finalize a case plan within 30 days of a probationer's placement on intensive probation or initial release from custody. The officer shall ensure the case plan includes signatures of the probation officer, surveillance officer and probationer and objectives in the case plan are measurable;

d. Develop and implement supervision strategies that are matched by standardized assessment results and criminogenic factors with the probationer's risks, needs and strengths that promote supervision goals and to provide effective supervision that is individualized, proportional and purposeful. Surveillance and other interventions shall be proportionately matched to emerging or decreasing risk factors;

e. Assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use shall be accepted in lieu of alcohol or drug testing ~~Target interventions to promote public safety~~;

f. Evaluate the case plan and supervision strategies on an ongoing basis;

g. Use communication techniques that engage the probationer in their own case plan, motivation and goals ~~Administer the standardized reassessment every 180 days. The results of the standardized reassessment, along with the intensive probationer's~~

~~compliance with the conditions of intensive probation and any other relevant factors, shall be used to develop a new case plan~~;

h. Administer the standardized reassessment every 180 days. The results of the standardized reassessment, along with the intensive probationer's compliance with the conditions of intensive probation and any other relevant factors, shall be used to develop a new case plan ~~Review the assessment and the previous case plan during the development of a new case plan to determine if a change in strategies is required to promote behavioral changes. Strategies shall be re-evaluated if there has been regress or no change in behavior~~;

i. Review the assessment and the previous case plan during the development of a new case plan to determine if a change in strategies is required to promote behavioral changes. Strategies shall be re-evaluated if there has been regress or no change in behavior ~~Monitor intensive probationer behavior and compliance with the conditions of intensive probation and, when warranted, petition the court to increase or decrease the intensive probationer's level of supervision~~;

j. Provide probationers with feedback on the results of an assessment or reassessment and progress with the established behavioral goals and conditions of probation and provide positive reinforcement to encourage behavioral changes ~~Respond to emerging risk indicators with graduated increases in the level of supervision, pursuant to probation departmental policy~~;

k. Monitor intensive probationer behavior and compliance with the conditions of intensive probation and, when warranted, petition the court to increase or decrease the intensive probationer's level of supervision or, for waivered probation officers, supervision contact level ~~Provide probationers with feedback on the results of an assessment or reassessment and progress with the established behavioral goals and conditions of probation and provide positive reinforcement to encourage behavioral changes~~;

l. Monitor, record and enforce the community restitution requirements ordered by the court ~~Provide probationers with information and referrals to social services that may promote the individual's ability to function under decreasing levels of supervision~~;

m. Respond to emerging risk indicators by targeting interventions to promote public safety and utilizing graduated increases in the level of supervision, pursuant to probation departmental policy ~~Petition the court to reduce the level of supervision for a probationer that assesses as low risk on the standardized assessment or standardized reassessment. The intensive probation team shall document in the case record the circumstances for continuing probationers that assess as low risk on the standardized risk needs instrument on intensive probation supervision.~~;

n. Respond to positive pro-social behavior pursuant to established departmental incentives policies ~~Petition the court to modify the intensive probationer's supervision to standard probation or terminate the period of probation when the intensive~~

~~probation team determines that intensive probation is no longer needed. If the court grants the modification from intensive supervision to standard supervision, the probation department shall transfer the case to a standard probation officer~~;

o. Provide a written directive to the intensive probationer referring the intensive probationer to an appropriate service provider within 60 days of sentencing, initial release from custody as a condition of intensive probation, or when a need for treatment, education or counseling is identified. If more than one area of treatment or counseling is identified, the intensive probation officer shall prioritize the needs and address the one with highest priority within the prescribed time frame. The intensive probation officer shall then address the remaining treatment or counseling areas in descending order. Additional referrals to social services that may promote the individual's ability to function under decreasing levels of supervision should be made as necessary; ~~Require each direct probationer under the intensive probation team's supervision to submit a schedule of activities for approval. Intensive probationers who are incarcerated or participating in residential treatment are exempt from this requirement. The intensive probation team shall monitor and enforce the approved schedule; and~~

p. Petition the court to reduce the level of supervision for a probationer that assesses as low risk on the standardized assessment or standardized reassessment. The intensive probation team shall document in the case record the circumstances for continuing probationers that assess as low risk on the standardized risk needs instrument on intensive probation supervision; ~~Make a documented effort to locate an intensive probationer. If the intensive probationer is not located within 72 hours, the intensive probation team shall file a petition to revoke probation no later than the next business day and request that the court issue a warrant. The probation department's efforts to locate the intensive probationer shall continue until the intensive probationer is apprehended.~~

q. Petition the court to modify the intensive probationer's supervision to standard probation or terminate the period of probation when the intensive probation team determines that intensive probation is no longer needed. If the court grants the modification from intensive supervision to standard supervision, the probation department shall transfer the case to a standard probation officer; ~~The probation officer shall seek a criminal restitution order upon the expiration of 90 days, pursuant to A.R.S. § 13-805(A)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1).~~

r. Require each direct probationer under the intensive probation team's supervision to submit a schedule of activities for approval. The intensive probation officer shall monitor and enforce approved schedules established pursuant to A.R.S. § 13-914(E)(4). For probationers that are meeting expected behavioral goals, scheduling requirements shall provide the probationer a graduated reduction in structured activities to promote a successful transition to reduced supervision. Scheduled activities shall provide opportunities for pro-social activities "as specifically allowed in each instance by the adult probation officer" (A.R.S. § 13-914(E)(4)). Intensive

probationers who are incarcerated or participating in residential treatment are exempt from this requirement. The intensive probation team shall monitor and enforce the approved schedule;

s. Conduct an investigation of arrest notification. Upon the receipt of an arrest notification, the intensive probation officer shall immediately contact the law enforcement officer or agencies involved to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The intensive probation officer shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident;

t. Make a documented effort to locate an intensive probationer. If the intensive probationer is not located within 72 hours, the intensive probation officer shall file a petition to revoke probation no later than the next business day and request that the court issue a warrant. The probation department's efforts to locate the intensive probationer shall continue until the intensive probationer is apprehended; and

u. The probation officer shall seek a criminal restitution order upon the expiration of 90 days, pursuant to A.R.S. § 13-805(A)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1).

3-9. **[No changes.]**

M~~N~~. Program Placement.

1. A person placed on intensive probation shall be supervised by the intensive probation team pursuant to the minimum supervision requirements established pursuant to A.R.S. § 13-916 (F)(2) ~~for supervision level I until such time as the standardized assessment and initial case plan have been completed and the probationer has demonstrated satisfactory progress meeting case plan objectives~~.

2. Upon the completion of the standardized assessment and initial case plan, the intensive probation team shall utilize the results of the standardized assessment, along with the probationer's compliance with the conditions of intensive probation and any other relevant factors, and recommend to the court placement on an appropriate supervision level.

3. A person continued on intensive probation as a result of a probation violation proceeding may be supervised at any supervision level as established by the standardized assessment or reassessment and other relevant case information. The intensive probation team shall utilize the results of the standardized assessment or reassessment, along with the probationer's compliance with previously imposed conditions of standard or intensive probation and any other relevant factors, and recommend to the court placement on an appropriate supervision level.

4. An intensive probationer may exit intensive probation at any supervision level.

N~~O~~. Minimum Supervision Requirements.

1. The following supervision requirements are established as minimum thresholds for intensive probationers being supervised in the community without waiver provisions. Each probation department may establish more rigorous intensive supervision requirements. Each chief probation officer shall ensure that all established minimum intensive supervision requirements are provided in writing to each intensive probation team, along with training on adherence to those requirements.

2. The probation department shall establish and document minimum intensive supervision requirements for intensive probationers incarcerated in jail. Each probation department shall provide, in writing to each intensive probation team, the minimum intensive supervision requirements established for intensive probationers incarcerated in jail and furnish training on adherence to those requirements.

~~3. The probation department shall establish supervision guidelines that are directed toward achieving desired outcomes that include, but are not limited to the reduction of the offender recidivism and criminogenic factors and will ensure that the majority of intensive probation supervision resources are dedicated to high risk probationers in order to successfully complete their term of probation and promote positive behavioral changes. Supervision guidelines shall include the following considerations:~~

   ~~a. Tailored to the risks, needs and strengths presented by the individual probationer as determined by the standardized assessment;~~

   ~~b. Supervision monitoring and intervention strategies are to involve no greater deprivations of liberty or property than are reasonably necessary to address sentencing purposes. Supervision programs, surveillance, and strategies that are utilized shall be the least intrusive means necessary to promote public safety and supervision goals;~~

   ~~c. Initial and subsequent supervision planning shall develop specific goal-directed objectives to be accomplished by the probationer during the term of supervision and the strategies that the officer will use to monitor compliance and promote the accomplishment of those objectives. Supervision contacts shall be integral to implementing the overall supervision strategies, have a purpose that is directly related to case objectives and the probationer's level and type of risk;~~

   ~~d. High risk cases require the concurrent implementation of multiple intervention strategies that apply the skills from a variety of disciplines to address the level and type of risk presented by the individual probationer, build on a probationer's strengths, and provide probationers with incentives to change;~~

   ~~e. Document changes in a probationer's circumstances throughout the period of probation and actively engage in assessing the impact of any changes on the level and type of supervision. Officers shall independently assess a probationer's circumstances~~

~~through field and collateral contacts at a level proportional to the issues in the individual case;~~

~~f. Responses to noncompliance shall be timely, realistic and escalating; and shall include elements designed to both control and correct noncompliance; and~~

~~g. The intensity and frequency of supervision activities shall be reduced over time for stable, compliant probationers who are meeting their supervision objectives.~~

3~~4~~. Supervision level I is reserved for probationers who assess as high risk on the standardized assessment or reassessment as well as newly sentenced probationers who assess as medium or low risk and shall include:

a. Visual contacts. The intensive probation team shall have a minimum of four visual contacts each week with each intensive probationer. Home contacts are required on a random and varied basis. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.

b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation team shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation team shall have face-to-face, telephonic or written contact with the intensive probationer's employer each week. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.

~~c. Investigation of arrest notification. The intensive probation team shall immediately contact the law enforcement officer or agency involved, upon receipt of an arrest notification, to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The intensive probation team shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident.~~

~~d. Schedule. The intensive probation team shall monitor and enforce approved schedules established pursuant to A.R.S. § 13-914(E)(4). For probationers that are meeting expected behavioral goals, scheduling requirements shall provide the probationer a graduated reduction in structured activities to promote a successful transition to reduced supervision. Scheduled activities shall provide opportunities for pro-social activities "as specifically allowed in each instance by the adult probation officer" (A.R.S. § 13-914(E)(4)).~~

~~e. Community restitution. The intensive probation team shall monitor, record and enforce the community restitution requirements ordered by the court.~~

~~f. Alcohol and drug testing. The intensive probation team shall assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use shall be accepted in lieu of alcohol or drug testing.~~

~~g. Treatment and counseling. The intensive probation team shall provide a written directive to the intensive probationer referring the intensive probationer to an appropriate service provider within 60 days of sentencing, initial release from custody as a condition of intensive probation, or when a need for treatment, education or counseling is identified. If more than one area of treatment or counseling is identified, the intensive probation team shall prioritize the needs and address the one with highest priority within the prescribed time frame. The intensive probation team shall then address the remaining treatment or counseling areas in descending order.~~

~~h. Development of case plans that target risk and need areas evidenced to be significant predictors of risk to re-offend.~~

~~i. The use of communication techniques that engage the probationer in their own case plan, motivation and goals.~~

~~j. Responses to offender behavior pursuant to established departmental policies on graduated responses of consequences and incentives.~~

~~k. Evaluation of ongoing supervision and strategies.~~

~~l. Responses to positive pro-social behavior pursuant to established departmental incentives policies.~~

~~m. The probation officer's recommendation for a reduction of supervision for eligible probationers pursuant to the results of the standardized risk assessment or standardized risk reassessment may be made to the court once it has been ascertained that a change in supervision level is warranted based upon standardized assessment and reassessment and progress with established behavioral goals.~~

4~~5~~. Supervision level II is reserved for probationers who assess as high risk on the standardized assessment or reassessment and who have demonstrated positive behavioral change. A modification must be obtained from the court prior to placement on level II. Supervision level II shall include:

a. Visual contacts. The intensive probation team shall have a minimum of two visual contacts each week with each intensive probationer, with at least one occurring at the intensive probationer's residence. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.

b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation team shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation team shall have face-to-face, telephonic or written contact with the intensive probationer's employer every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.

c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable. ~~Investigation of arrest notification. Upon the receipt of an arrest notification, the intensive probation team shall immediately contact the law enforcement officer or agencies involved to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The intensive probation team shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident.~~

~~d. Schedule. The intensive probation team shall monitor and enforce approved schedules established pursuant to A.R.S. § 13-914(E)(4). For probationers that are meeting expected behavioral goals, scheduling requirements shall provide the probationer a graduated reduction in structured activities to promote a successful transition to reduced supervision. Scheduled activities shall provide opportunities for pro-social activities "as specifically allowed in each instance by the adult probation officer" (A.R.S. § 13-914(E)(4)).~~

~~e. Community restitution. The intensive probation team shall monitor, record and enforce the community restitution requirements ordered by the court.~~

~~f. Alcohol and drug testing. The intensive probation team shall assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use shall be accepted in lieu of alcohol or drug testing.~~

~~g. Treatment and counseling. The intensive probation team shall provide a written directive to the intensive probationer referring the intensive probationer to an appropriate service provider within 60 days of sentencing, initial release from custody as a condition of intensive probation, or when a need for treatment, education or counseling is identified. If more than one area of treatment or counseling is identified, the intensive probation team shall prioritize the needs and address the one with highest priority within the prescribed time frame. The intensive probation team shall then address the remaining treatment or counseling areas in descending order.~~

~~h. Collateral Contacts: The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable.~~

~~i. Development of case plans that target risk and need areas evidenced to be significant predictors of risk to re-offend.~~

~~j. The use of communication techniques that engage the probationer in their own case plan, motivation and goals.~~

~~k. Responses to offender behavior pursuant to established departmental policies on graduated responses of consequences and incentives.~~

~~l. Responses to positive pro-social behavior pursuant to established departmental incentives policies.~~

~~m. Evaluation of ongoing supervision and strategies.~~

5~~6~~. Supervision level III is designed for transitioning high risk probationers to standard probation supervision and as a step down from level I for probationers assessed as medium or low risk. A modification must be obtained from the court prior to placement on level III. Supervision level III shall include:

a. Visual contacts. The intensive probation team shall have a minimum of one visual contact each week with each intensive probationer, with at least one occurring at the intensive probationer's residence every other week. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.

b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation team shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation team shall have face-to-face, telephonic or written contact with the intensive probationer's employer every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.

c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable. ~~Investigation of arrest notification. Upon the receipt of an arrest notification, the intensive probation team shall immediately contact the law enforcement officer or agencies involved to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The intensive probation team shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident.~~

~~d. Schedule. The intensive probation team shall monitor and enforce approved schedules established pursuant to A.R.S. § 13-914(E)(4). For probationers that are meeting expected behavioral goals, scheduling requirements shall provide the~~

~~probationer a graduated reduction in structured activities to promote a successful transition to reduced supervision. Scheduled activities shall provide opportunities for pro-social activities "as specifically allowed in each instance by the adult probation officer" (A.R.S. § 13-914(E)(4)).~~

~~e. Community restitution. The intensive probation team shall monitor, record and enforce the community restitution requirements ordered by the court.~~

~~f. Alcohol and drug testing. The intensive probation team shall assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use shall be accepted in lieu of alcohol or drug testing.~~

~~g. Treatment and counseling. The intensive probation team shall provide a written directive to the intensive probationer referring the intensive probationer to an appropriate service provider within 60 days of sentencing, initial release from custody as a condition of intensive probation, or when a need for treatment, education or counseling is identified. If more than one area of treatment or counseling is identified, the intensive probation team shall prioritize the needs and address the one with highest priority within the prescribed time frame. The intensive probation team shall then address the remaining treatment or counseling areas in descending order.~~

~~h. Collateral Contacts: The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable.~~

~~i. Development of case plans that target risk and need areas evidenced to be significant predictors of risk to re-offend.~~

~~j. The use of communication techniques that engage the probationer in their own case plan, motivation and goals.~~

~~k. Responses to offender behavior pursuant to established departmental policies on graduated responses of consequences and incentives.~~

~~l. Responses to positive pro-social behavior pursuant to established departmental incentives policies.~~

~~m. Evaluation of ongoing supervision and strategies.~~

6~~7~~. Supervision level IV is reserved for probationers who assesses as medium or low risk on the standardized assessment or reassessment and is designed to be a transition between intensive and standard probation. The supervising probation officer may petition the court to reduce the level of supervision for a probationer that assesses as low risk on the standardized assessment or standardized reassessment. The case record shall document the circumstances for continuing probationers that assess as low risk on the standardized risk needs instrument on intensive probation supervision. A modification must be

obtained from the court prior to placement on level IV. Supervision level IV shall include:

a. Visual contacts. The intensive probation team shall have a minimum of one visual contact every two weeks with each intensive probationer, occurring at the intensive probationer's residence. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.

b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation team shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation team shall have face-to-face, telephonic or written contact with the intensive probationer's employer once every four weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.

c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 4 weeks, if applicable~~. Investigation of arrest notification. Upon the receipt of an arrest notification, the intensive probation team shall immediately contact the law enforcement officer or agencies involved to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The intensive probation team shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident~~.

~~d. Schedule. The intensive probation team shall monitor and enforce approved schedules established pursuant to A.R.S. § 13-914(E)(4). For probationers that are meeting expected behavioral goals, scheduling requirements shall provide the probationer a graduated reduction in structured activities to promote a successful transition to reduced supervision. Scheduled activities shall provide opportunities for pro-social activities "as specifically allowed in each instance by the adult probation officer" (A.R.S. § 13-914(E)(4)).~~

~~e. Community restitution. The intensive probation team shall monitor, record and enforce the community restitution requirements ordered by the court.~~

~~f. Alcohol and drug testing. The intensive probation team shall assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use shall be accepted in lieu of alcohol or drug testing.~~

~~g. Treatment and counseling. The intensive probation team shall provide a written directive to the intensive probationer referring the intensive probationer to an~~

~~appropriate service provider within 60 days of sentencing, initial release from custody as a condition of intensive probation, or when a need for treatment, education or counseling is identified. If more than one area of treatment or counseling is identified, the intensive probation team shall prioritize the needs and address the one with highest priority within the prescribed time frame. The intensive probation team shall then address the remaining treatment or counseling areas in descending order.~~

~~h. Collateral Contacts: The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 4 weeks, if applicable.~~

~~i. Development of case plans that target risk and needs areas evidenced to be significant predictors of risk to re-offend.~~

~~j. The use of communication techniques that engage the probationer in their own case plan, motivation and goals.~~

~~k. Responses to offender behavior pursuant to established departmental policies on graduated responses of consequences and incentives.~~

~~l. Responses to positive pro-social behavior pursuant to established departmental incentives policies.~~

~~m. Evaluation of ongoing supervision and strategies.~~

7~~8~~. Supervision level V is reserved for intensive probationers participating in residential treatment. On release from residential treatment, the intensive probation team shall utilize the results of the standardized assessment or reassessment, along with the intensive probationer's compliance with the conditions of intensive probation, discharge plan supported by and involving the treatment provider, intensive probation team and intensive probationer, and any other relevant factors to ~~place the intensive probationer in one of various~~ recommend to the court placement on an appropriate supervision level~~s~~. Supervision level V shall include:

a. Visual contacts. The intensive probation team shall have a minimum of one visual contact every 30 days with each intensive probationer. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled.

b. Treatment provider contacts. The intensive probation team shall have a minimum of one face-to-face, telephonic or written contact every 30 days with the intensive probationer's treatment provider.

c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 30 days, if applicable. ~~Investigation of arrest notification. The intensive probation team shall immediately contact the law enforcement officer or agency involved, upon receipt of an arrest notification, to ascertain the nature and circumstances surrounding the contact and~~

~~obtain a copy of any corresponding incident report or citation. The intensive probation team shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident.~~

d. Community restitution. Intensive probationers participating in residential treatment are exempt from community restitution requirements.

~~e. Alcohol and drug testing. The intensive probation team shall assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use shall be accepted in lieu of alcohol or drug testing.~~

~~f. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 30 days, if applicable.~~

~~g. Development of case plans that target risk and needs areas evidenced to be significant predictors of risk to re-offend.~~

~~h. The use of communication techniques that engage the probationer in their own case plan, motivation and goals.~~

~~i. Responses to offender behavior pursuant to established departmental policies on graduated responses of consequences and incentives.~~

~~j. Responses to positive pro-social behavior pursuant to established departmental incentives policies.~~

~~k. Evaluation of ongoing supervision and strategies.~~

O~~L~~. Waiver Provisions.

1. A.R.S. § 13-919 provides:

> The requirements of § 13-916, subsection A, subsection B and subsection F, paragraph 2 may be waived for a county if the case load of adult probation officers supervising persons on intensive probation is not more than fifteen persons and the program requires visual contact with each probationer at least one time a week.

2. The presiding judge shall file a waiver request pursuant to A.R.S. §§ 13-916 and 13-919 with the AOC on a form prescribed by the administrative director. The administrative director shall consider the following when determineing whether to grant the waiver~~.~~ :

   a. The number of offenders on intensive probation supervision in the requesting county;

b. The geographical make up of the requesting county and the communities that would be served under the waiver; and

c. The impact to the program and the implementation of evidence-based supervision by utilizing one-person teams.

3. Waiver requests shall be renewed annually if the participating court expects to maintain caseloads of no more than fifteen persons on intensive probation supervision caseloads.

4. The following supervision requirements are established as minimum thresholds for intensive probationers being supervised in the community. Each probation department may establish more rigorous intensive supervision requirements. Each chief probation officer shall ensure that all established minimum intensive supervision requirements are provided in writing to each intensive probation officer, along with training on adherence to those requirements. ~~Minimum supervision requirements under the waiver provision shall remain in effect throughout the period of intensive probation supervision and shall include:~~

   ~~a. Visual contact standards of one visual contact at least one time per week per probationer;~~

   ~~b. Pursuant to A.R.S. § 13-914(E)(6), "…For good cause, the court may reduce the number of community restitution hours performed to not less than twenty hours each month" and,~~

   ~~c. All requirements identified in subsections O (1-3) and O(6)(a-m) ACJA 6-202.01.~~

5. The probation department shall establish and document minimum intensive supervision requirements for intensive probationers incarcerated in jail. Each probation department shall provide, in writing to each intensive probation officer, the minimum intensive supervision requirements established for intensive probationers incarcerated in jail and furnish training on adherence to those requirements.

6. A person placed on intensive probation and assigned to a waivered officer shall be supervised by the intensive probation officer at supervision Contact Level 2 until the completion of the standardized assessment and initial case plan. The intensive probation officer shall utilize the results of the standardized assessment, along with the probationer's compliance with the conditions of intensive probation and any other relevant factors, and recommend to the court placement on an appropriate supervision contact level. Pursuant to A.R.S. § 13-917, if reductions or increases in supervision level are warranted, such reductions or increases shall be made by the court upon recommendation of the probation officer, as further described in L(8)(k).

   a. Contact Level 2 (CL2) shall be recommended for probationers assessing as high risk on the standardized assessment or reassessment. Minimum contact standards shall include:

(1) Visual contacts: a minimum of two per week with the probationer, with at least one occurring in the probationer's residence. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.
(2) Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation officer shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation officer shall have face-to-face, telephonic or written contact with the intensive probationer's employer every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.
(3) Collateral contacts: The intensive probation officer shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable.

b. Contact Level 3 (CL3) may be recommended for probationers who have demonstrated positive behavioral change while under supervision contact level 2. Minimum contact standards shall include:

(1) Visual contacts: a minimum of one visual contact per week, with at least one contact occurring in the probationer's residence every other week. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.
(2) Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation officer shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation officer shall have face-to-face, telephonic or written contact with the intensive probationer's employer every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.
(3) Collateral contacts: The intensive probation officer shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable.

c. Contact Level 4 (CL4) may be recommended for probationers assessing as medium or low risk on the standardized assessment or reassessment and who have demonstrated positive behavioral change while under supervision contact level 3. Intensive probation officers shall not recommend supervision contact level 4 for probationers who assess as high risk. Minimum contact standards shall include:

(1) Visual contacts: a minimum of one visual contact every two weeks, occurring in the probationer's residence. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.
(2) Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation officer shall notify the intensive probationer's employer of the intensive probationer's probation status and employment

verification requirements. The intensive probation officer shall have face-to-face, telephonic or written contact with the intensive probationer's employer every four weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.

(3) Collateral contacts: The intensive probation officer shall have a minimum of one collateral contact regarding each intensive probationer every four weeks, if applicable.

d. Contact Level 5 (CL5) intensive probationers participating in residential treatment on release from residential treatment, the intensive probation officer shall utilize the results of the standardized assessment or reassessment, along with the intensive probationer's compliance with the conditions of intensive probation, discharge plan supported by and involving the treatment provider, intensive probation officer and intensive probationer, and any other relevant factors to recommend to the court placement on an appropriate supervision contact level. Minimum contact standards shall include:

(1) Visual contacts. The intensive probation officer shall have a minimum of one visual contact every 30 days with each intensive probationer. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled.

(2) Treatment provider contacts. The intensive probation officer shall have a minimum of one face-to-face, telephonic or written contact every 30 days with the intensive probationer's treatment provider.

(3) Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 30 days, if applicable.

Section P – No changes

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2012	_X_ Formal Action/Request __ Information Only __ Other	ACJA proposed changes to § 7-204 (Private Process Servers)

FROM:
Anne Hunter, Manager, Certification and Licensing Division, Administrative Office of the Courts

DISCUSSION:
A.R.S. § 11-445(I), Rules 4(d) and (e), Rules of Civil Procedure and the Arizona Code of Judicial Administration § 7-204: Private Process Server, contain provisions regulating private process servers, specify that a private process server is an "officer of the court," and authorize process servers to serve process anywhere in the state.

A rule (R-12-0021) was recently adopted to amend Rules 4(d) and (e) to, among other things, strike the provisions regarding the "registration" requirements and to place those requirements in ACJA § 7-204. Rules 4(d) and (e) were initially adopted by the Supreme Court in 1991; ACJA § 7-204 in 2003.

The proposed amendments to ACJA § 7-204 incorporate best practices in the regulatory arena, including residency requirements, factors to consider when reviewing an application for certification, and disciplinary sanctions. Many of the new provisions in § 7-204 are modeled after ACJA § 7-201 which applies to the regulation of a number of other professions under the authority of the Supreme Court.

In conjunction with the proposed changes, staff has worked closely with the Clerks of the Superior Court and the private process servers to implement needed improvements to the identification cards issued to certified private process servers. The current "wallet sized" identification cards are being replaced with cards that are professional in appearance/style and that a private process server can wear and display when serving process.

Amendments to ACJA § 7-204(D)(4)(b)(2) and (J)(6)(c) address the new process for production of the identification cards and identification of the process server.

The Superior Court is responsible for the administration of the Private Process Server Program, however the provisions in ACJA § 7-204 have impact to the limited jurisdiction courts as well. For example, the existing provision in ACJA § 7-204, subsection J(4)(i) regarding the protocol for service of process in a court building was initially suggested by a limited jurisdiction court judge. Therefore, the proposed amendments to ACJA § 7-204 have been presented to the Limited Jurisdiction Court Committee and the Committee on Superior Court, as well as being circulated for public comment. The Committee on Superior Court voted to recommend that the Arizona Judicial Council adopt the code section proposals as written. For recommendations voted on by the Limited Jurisdiction Court Committee, see the attached table. The table also contains comments received during the public comment period and the manner in which they were addressed.

RECOMMENDED COUNCIL ACTION:
Council may vote to adopt or not adopt the proposed changes to ACJA § 7-204.

PARAGRAPH	COMMENT	RESPONSE
(A) "Private Process Server" and (B) (E)(4) (G)(1)(d)	Support for: • the use of the term "certified" as opposed to "registered," • the elimination of provisional certification, and • additional language to close a loophole in the continuing education requirements. (comment from the Arizona Association of Certified Process Servers)	None required.
(E)(2)(c)(6)	Opposition to eliminating personal references as a certification requirement. (comment from the Arizona Association of Certified Process Servers)	Change not incorporated. The requirement for references is not a best practice and did not add any meaningful information to the certification process.
(E)(2)(c)(1)	Opposition to allowing non-Arizona residents to become certified in Arizona. (comment from the Arizona Association of Certified Process Servers)	Change not incorporated. Changes to the Rules of Civil Procedure 4(e) effective January 1, 2013, strike the requirement that an applicant be a resident of Arizona. Not being a resident of Arizona does not preclude the AOC from holding certificate holders responsible for code violations.
(E)(b)(4)	Opposition to the language regarding criteria a judge shall consider when reviewing the application for certification of an individual with a misdemeanor or felony conviction. The Limited Jurisdiction Court Committee voted to recommend that the Arizona Judicial Council not adopt the code section proposal as written – see code section proposal labeled "LJC approved."	Changes to the original proposal that were approved by the Limited Jurisdiction Court Committee are attached to this table for comparison purposes and are labeled "LJC approved." The original proposed changes to paragraph (E)(b)(4) regarding conviction of a felony or misdemeanor are consistent with A.R.S. 13-904(E) which states that a person whose civil rights have been restored may not be disqualified for

	(comment from the Arizona Association of Certified Process Servers and members of the Limited Jurisdiction Court Committee)	certification solely because of a prior conviction of a felony or misdemeanor unless the "offense has a reasonable relationship to the functions of the employment or occupation for which the license, permit or certificate is sought."
(L)(4)(l)(8)	Opposition to requiring documentation for continuing education activities of eight hours or more in one day. (comment from the Arizona Association of Certified Process Servers)	Changes not incorporated. AOC staff believe that it is reasonable to require applicants who attend more than eight hours of training in one day submit an agenda from the training.
N/A	Suggestion that the amendment include a requirement for 40 hours of pre-certification training. The Limited Jurisdiction Court Committee voted to recommend to the Arizona Judicial Council to accept the suggestion, however there has been no language drafted. The Committee on Superior Court voted to recommend the Arizona Judicial Council did not vote to adopt the suggestion for a pre-certification training requirement. (comment from the Arizona Association of Certified Process Servers)	Changes not incorporated. AOC staff believes adding this requirement addresses a non-issue, and that the certification examination is adequate to prepare individuals for serving process. Also, an additional requirement of pre-certification training would necessitate establishing monitoring responsibilities and associated costs.
N/A	Suggestion that the list of process servers maintained on the AOC website include all qualified process servers, and not just those certified to serve process in Arizona. (comment from the Independent Professional Process Servers of America, Inc.)	Changes not incorporated.

Paragraph (E)(b)(4) LJC approved change:

~~a~~b. The presiding judge may refuse to certify an applicant if one or more of the following is found:

(1) Material misrepresentation, omission, ~~or~~ fraud, dishonesty, or corruption on the part of the applicant in the application for, or attempt to obtain, certification, including the examination;
(2) A record of any act constituting material misrepresentation, omission, dishonesty, corruption, or fraud on the part of the applicant in business or financial matters;
(3) A record of conduct showing the applicant is incompetent or a source of injury and loss to the public;
~~(4) A record of repeated complaints by the public or the court;~~
~~(5)~~(4)A record of conviction by final judgment of a misdemeanor or felony,
(5~~6~~)A record of denial, revocation, suspension, or any disciplinary action ~~censure~~ of any professional or occupational license or certificate of the applicant by any federal, state, or local government. The judge shall consider whether the underlying conduct in any other disciplinary action is relevant to certification as a private process server;
(6) A record of a termination, suspension, probation, or any other disciplinary action regarding past employment if the underlying conduct is relevant to certification as a private process server;
(7) The applicant has been found civilly liable by final judgment in an action involving fraud, misrepresentation, material omission, misappropriation, theft, or conversion;
(8) The applicant is currently on probation or parole or named in an outstanding arrest warrant;
~~(9) The applicant has not submitted fingerprints pursuant to subsection E(2)(c)(4) and the presiding judge has not received and reviewed the criminal background analysis,~~ or
(10)The applicant has violated any Arizona law, Arizona Rules of Court, ~~and this code section~~ ACJA § 7-204, or court orders governing private process servers.
(11)The applicant has violated any decision, order, or rule issued by a professional regulatory entity;
(12) The applicant has violated any order of a court, judicial officer, or administrative tribunal;
(13) The applicant has made a false or misleading statement or verification in support of an application for a certificate filed by another person;
(14)The applicant has made a false or misleading oral or written statement to judicial officers, judicial staff or division staff;
(15)The applicant failed to disclose information on the certification application subsequently revealed through the background check; or
(16)The applicant failed to respond or furnish information to the presiding judge, clerk, or judicial staff 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.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 7: Administrative Office of the Courts
Chapter 2: Certification and Licensing Programs
Section 7-204: Private Process Server

A. Definitions. ~~In this code section the~~ The following definitions apply:

"Accredited" means placement on a list of nationally recognized authorizing agencies the United States Secretary of Education determines to be reliable authorities as to the quality of education or training provided by the institutions of higher education, and the higher education programs they sanction.

"Active" means a valid and existing certificate to practice as a certified process server.

~~"Administrative Director" means the director of the Administrative Office of the Courts, Arizona Supreme Court, or the director's designee.~~

~~"Administrative Office" means the Administrative Office of the Courts Arizona Supreme Court.~~

"Advisory letter" means written communication notifying a certificate holder the conduct, while not warranting discipline, may result in future disciplinary action if not modified or eliminated. An advisory letter is not a disciplinary action.

"Applicant" means a person who has submitted a completed application and all required application and fingerprint processing fees.

"Censure" means a written formal discipline sanction, finding a certificate holder has violated one or more provisions of the statutes, court rules, or this code section.

"Certificate holder" means any entity or individual granted and currently holding valid certification pursuant to statutes, court rules, and this code section.

"Certification" means a certificate issued by the presiding judge once an applicant meets all the requirements of a private process server, pursuant to statutes, court rules, and this code section.

"Clerk" means the elected clerk of the Arizona Superior Court in each county.

~~"Code Section" means the referenced provision of the Arizona Code of Judicial Administration.~~

"Complainant" means a person or organization that initially files a complaint regarding the conduct of a private process server. The complainant is not a party to the proceeding.

"Community college" means an accredited educational institution providing training in the arts,

sciences, and humanities beyond the twelfth grade of the public or private high school course of study or vocational education, including terminal courses of a technical and vocational nature and basic education courses.

"Consent agreement" means a written statement to resolve a certification or complaint matter, voluntarily signed by the applicant or certificate holder.

"~~Days" means the same as provided by Arizona Rules of Civil Procedure, that is: the computation of days is as follows: If " . . . less than 11 days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation . . . " and if ". . . 11 days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation."~~

"Director" means the administrative director of the courts, or the director's designee.

"Division director" means the director of the certification and licensing division of the Administrative Office of the Courts or the division director's designee.

"Division staff" means all members of the certification and licensing division of the Administrative Office of the Courts, including the division director.

"Disciplinary action" means either informal or formal proceedings against a certificate holder after a finding of probable cause the certificate holder has committed acts of misconduct or violations of statutes, court rules, or this code section.

"Dismissed with prejudice" means final disposition barring future action under this section on the same issue, claim or cause.

"Dismissed without prejudice" means final disposition with the right to bring future action under this section on the same issue, claim, or cause.

"Expired" means the certificate has lapsed on a specified date.

"Filing" or "filed" means a document has been received and date-stamped by the clerk.

"Formal statement of C~~c~~harges" means ~~a~~ the document setting forth specific acts of misconduct by a certified private process server of statutes, court rules, or this code section, including any amendments approved by the court, upon a determination of probable cause.

"Formal ~~D~~disciplinary ~~P~~proceedings" means the process initiated upon a determination of probable cause the alleged acts of misconduct or violations of the statutes, court rules, or this code section by a certified process server that, if true, would warrant a censure, consent agreement or other negotiated settlement, restrictions, probation, additional training, a cease and desist order, suspension, or revocation of certification pursuant to subsection (H). ~~filing of formal charges specifying misconduct by a certified private process server. Formal disciplinary~~

~~proceedings commence after a finding there is probable cause to believe a private process server has committed a violation of the administrative code, statutes or court rules pertaining to service of process that if true, would warrant a public sanction. The public sanction could include restrictions on the certificate, or suspension or revocation of the certificate.~~

"Government ~~E~~employee ~~P~~process ~~S~~server" means an individual who, in the normal scope of the individual's responsibilities as a government employee, serves process for the governmental agency that employs the individual.

"Inactive" means a certified private process server who voluntarily decides not to practice in the specified profession or occupation for a specified period of time and who is not the subject of any pending disciplinary action.

"Informal ~~D~~disciplinary ~~P~~proceedings" means the process initiated upon a determination of probable cause the alleged acts of misconduct or violations of the statutes, court rules, or this code section by a certificate holder that, if true, would warrant a letter of concern, pursuant to subsection (H). ~~resolution of a complaint prior to the filing of formal charges. An informal disciplinary proceeding may result in imposition of sanctions, but the sanction may not include restrictions on a certificate, suspension or revocation of a certificate.~~

"Injury" means harm to a client, customer, the public, judicial or legal system, or the profession or occupation resulting from a certificate holder's misconduct.

"Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

"Letter of concern" means a written informal discipline sanction finding a certificate holder has violated one or more provisions of the statutes, court rules, or this code section.

"Minimum competencies" means having the required skills for an adequate level of performance.

"Presiding ~~J~~judge" means the presiding judge of the Arizona Superior Court or the presiding judge's designee.

"Probable cause" means reasonable grounds for belief in the existence of facts concerning alleged acts of misconduct or violations by a certificate holder, warranting informal or formal discipline against the certificate holder.

"Probation" means a written formal discipline sanction finding a certificate holder has violated one or more provisions of the statutes, court rules, or this code section, but allowing the

certificate holder to practice as a process server under specified conditions for a set period of time.

"Private ~~P~~process ~~S~~server" means a person, ~~duly appointed or registered~~ certified pursuant to the requirements in A.R.S. § 11-445~~(H)~~(I), this code section, and any other applicable statute or rule. As defined by A.R.S. § 11-445~~(H)~~(I), a private process server:

> ~~. . .~~ [M]~~m~~ay serve all process, writs, orders, pleadings or papers required or permitted by law to be served before ~~prior to~~, during~~,~~ or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable, except writs or orders requiring the service officer to sell, deliver or take into the officer's custody persons or property, or as may otherwise be limited by rule established by the supreme court. A private process server is an officer of the court.

~~"Program coordinator" means the staff appointed by the director to administer the program.~~

~~"Provisional Certification" means a temporary certificate issued by the presiding judge which expires 120 days after the presiding judge grants it.~~

"Professional regulatory entity" means a government or private unit associated with and having authority over a group of qualified and practiced individuals in a profession or occupation.

"Revoked" or "revocation" means a written formal discipline sanction, finding a certificate holder has violated one or more provisions of the statutes, court rules, or this code section and the certificate to practice as a process server is rescinded. ~~the permanent invalidation or cancellation of a private process server's certificate.~~

"Sanction" means an explicit and official action resulting from an informal or formal disciplinary action finding a certificate holder has violated or failed to comply with one or more of the statutes, court rules, this code section, or court orders relevant to the certificate holder's profession or occupation.

"Section" means the referenced provision of Arizona Code of Judicial Administration § 7-204.

~~"Standard Certification" means a certificate issued by the presiding judge once an applicant meets all the requirements for certification of a private process server.~~

"Suspended" or "suspension" means a written formal discipline sanction finding a certificate holder has violated one or more provisions of the statutes, court rules, or this code section and the private process server's certificate is not revoked, but the certificate holder is not permitted to exercise the privileges of the certificate for a set period of time as the result of a final order of a disciplinary action.

"Valid" means a certificate issued by the presiding judge that is currently in effect and not expired, surrendered, suspended, or revoked.

"Voluntary surrender" means a certificate holder decides to discontinue practice as a process server and returns the certificate to the presiding judge for review and acceptance pursuant to subsection (E).

B. Applicability. This code section applies to the certification of ~~private~~ process servers pursuant to A.R.S. § 11-445~~(H)~~(I) and the Arizona Rules of Civil Procedure. This code ~~provision~~ section applies to the application, certification, and discipline of all private process servers in the State of Arizona. This code section governs private process server certification separately and without reference to Arizona Code of Judicial Administration § 7-201:~~,~~ General Provisions~~, of the Arizona Code of Judicial Administration~~. ~~For uniformity, consistency and ease of reading the term "certification" refers to either certification or registration~~.

C. Purpose. For eligibility to act as a private process server in Arizona, all persons shall obtain certification and comply with the requirements of A.R.S. § 11-445(~~H~~ I), the Arizona Rules of Civil Procedure, administrative orders, and ~~this administrative code section~~ this code section as adopted by the Arizona Supreme Court to govern private process servers. Certified private process servers may serve all process, writs, orders, pleadings, or papers required or permitted by law for service prior to, during, or independent of a court action, including all documents required or permitted for service by a sheriff or constable, except writs or orders requiring the service officer to sell, deliver, or take into custody persons or property, or as otherwise limited by this code section. Pursuant to Arizona Rules of Civil Procedure 4(e), a certified ". . . private process server . . ." is ". . . entitled to serve in such capacity for any court of the state anywhere within the State."

D. Administration.

1. Role and Responsibilities of the Supreme Court. Pursuant to A.R.S. § 11- 445(I) and Rule 4(e), Arizona Rules of Civil Procedure, the supreme court is responsible for administration of the private process server program and shall adopt rules for administration of the program.

~~1. Role and Responsibilities of the Administrative Director. The director shall have the authority to approve or disapprove matters of administration of the Private Process Server Program that involve the expenditure of program funds. The director may vest in any other person, acting in the director's name and by delegated authority, the authority to exercise or discharge any power, duty or function, normally belonging to the director, whether ministerial or discretionary.~~

2. Role and Responsibilities of the Director. The director as designated by the Az. Const. Art. 6 § 7 shall:

   a. Approve or disapprove matters of administration of the Private Process Server Program

that involve the expenditure of program funds;

b. Appoint and supervise all division staff;

c. Adopt policies and procedures, including forms, for administration of the Private Process Server Program; and

d. Ensure implementation of the applicable laws, court rules, and this code section.

~~2. Role and Responsibilities of the Program Coordinator. The director shall designate a program coordinator. The program coordinator is responsible for the administration of the Private Process Server Program in compliance with the law, Arizona Rules of Court, and Arizona Supreme Court administrative orders and this code section. The program coordinator may delegate any duties and responsibilities to staff.~~

~~a. The program coordinator shall perform tasks of administration of the Private Process Server Program to assist in the decentralized administration of the program in each county in Arizona. The program coordinator shall provide updates to the clerk of the superior court; make recommendations regarding matters pertaining to certification, complaints and investigations; and all other matters relevant to certified private process servers.~~

~~b. The program coordinator shall maintain a list of certified private process servers and shall post this list on the judicial department website. The judicial department website shall include each certificate holder's name and certificate number. The program coordinator may charge for the costs of providing copies of the certification list or any other public records of the program.~~

3. Role and Responsibilities of Division Staff.

a. The director shall designate the division director and other division staff to assist in the administration of the Private Process Server Program in compliance with the law, Arizona Rules of Court, Arizona Supreme Court administrative orders, and this code section. The division director may delegate any duties and responsibilities to division staff.

b. Division staff shall:

(1) Perform tasks of administration of the Private Process Server Program to assist in the decentralized administration of the program in each county in Arizona;
(2) Provide updates to the clerk;

(3) Make recommendations regarding matters pertaining to certification, complaints, and investigations; and all other matters relevant to certified private process servers;
(4) Maintain a list of certified process servers and post this list on the judicial department website. The judicial department website shall include each certificate holder's name, certificate number, county of certification, and any disciplinary action imposed against a certified process server. At a minimum, division staff shall update this list each quarter;
(5) Refer any complaint received regarding the actions of a certified process server to the clerk of the county where the alleged violation took place, pursuant to subsection H.

c. Division staff may:

(1) Charge for the costs of providing copies of the certification list or any other public records of the program; and
(2) Refer complaints to another state agency or entity with jurisdiction, if the supreme court or superior court does not have jurisdiction over the complaint.

4.~~3~~ Role and Responsibilities of the Clerks of the Superior Court. ~~The clerk of the superior court in each county is responsible for distributing and accepting applications and application materials, administering and grading examination, maintaining records, including the register of certified process servers pursuant to Rule 4(e), Arizona Rules of civil Procedure, accepting fee payments, coordinating the receipt of application materials for the presiding judge, notifying the program coordinator of certificates issued, changes of address, renewals, complaints, investigations and final decisions regarding discipline.~~

a. The clerk shall:

(1) Distribute application materials, using the application forms provided by the director, and accept applications and fee payments for initial and renewal of certifications;
(2) Administer and grade the examination for initial certification;
(3) Process the application materials, including fee payments and fingerprints, and forward the application materials to the presiding judge;
(4) Issue initial and renewal certificates to qualified individuals, upon approval by the presiding judge;
(5) Process photographs and issue an identification card to individuals granted certification by the presiding judge;
(6) Maintain records pertaining to applicants for certification and certified process servers, including:
(a) A current list or register of all certified process servers, in a format as provided by the director; and as required pursuant to Rule 4(e), Arizona Rules of Civil Procedure;
(b) Certificates issued or denied;
(c) Contact information on certified process servers, including address and phone number and any changes to the contact information;

(d) Renewal certificates granted or denied;
(e) Complaints, investigations and final decisions regarding complaints;

(7) Provide the following information to division staff:
(a) A report, at least each quarter, on all additions, deletions, and revisions to the certification list, including certificates issued, certificates denied, and changes of address;
(b) A report, at least each quarter, listing all complaints, investigations pending completion, informal and formal disciplinary proceedings, and final decisions regarding discipline. If a final decision regarding discipline of a certified private process server results in suspension or revocation of a certificate, the clerk shall provide the information to division staff within five days of the final order.
(c) An annual report naming the staff assigned responsibility for administering the private process server program in the county along with a current address, phone number, and e-mail address of each staff member.

b. The clerk may:

(1) Assign any duties and responsibilities to staff; and.
(2) Coordinate with clerks in other counties for the provisions of services pursuant to this code section, including processing of identification cards and administration of the examination for initial certification.

~~a. The clerk of the superior court in each county may assign any duties and responsibilities to staff. Annually the clerk shall file a letter with the program coordinator, naming the staff assigned responsibility for administering the Private Process Server Program along with a current address, phone number and e-mail address of each staff member.~~

~~b. The clerk of the superior court in each county shall report quarterly to the program coordinator all additions, deletions and revisions in the certification list. The clerk of the superior court shall maintain a current certification list of all private process servers of certificate holder status on a form approved by the director.~~

~~c. The clerk of the superior court in each county shall provide a quarterly report listing all complaints, investigations pending completion and informal and formal disciplinary proceedings to the program coordinator who will maintain the information for use by the presiding judges as needed.~~

~~d. The clerk of the superior court in each county shall notify the presiding judge if it appears a private process server has violated this code section.~~

~~4~~5. Role and Responsibilities of the Presiding Judges of the Superior Court. The presiding judge: ~~in the county of residence of the applicant, where the applicant applies for certification, is responsible for reviewing all application materials including criminal history information. The presiding judge is also responsible for granting or denying certification to~~

~~private process servers and granting or denying reexamination on a previously failed examination. The presiding judge receives complaints pursuant to subsection H of this code section, and investigates, initiates and adjudicates disciplinary proceedings. The presiding judge may vest in another person the authority to exercise or discharge any power, duty or function originally vested in the presiding judge, whether ministerial or discretionary. The designated person shall exercise these powers while acting in the presiding judge's name and by delegated authority.~~

a. Shall:

(1) Review all application materials, including criminal history information, and make all final decisions regarding the granting or denial of applications for initial and renewal of certification in the county of residence of the applicant;
(2) Review and make all final decisions regarding any other certification issues including granting or denying reexamination for an applicant who has previously failed the initial certification examination; and
(3) Receive complaints pursuant to subsection H and investigate, initiate, and adjudicate disciplinary proceedings.

b. May vest in another judicial officer the authority to exercise or discharge any power, duty, or function originally vested in the presiding judge, whether ministerial or discretionary. The designated person shall exercise these powers while acting in the presiding judge's name and by delegated authority.

E. Initial Certification.

1. Exemptions from Certification. The following persons are exempt from the certification requirements:

a. Any person specially appointed by the court pursuant to Rule 4(d), Arizona Rules of Civil Procedure;

b. Any party to an action or that party's attorney serving process pursuant to Rule 4(d), Arizona Rules of Civil Procedure, and

c. Any person serving a subpoena pursuant to Rule 45, Arizona Rules of Civil Procedure.

2. ~~Qualification for~~ Application for Initial Certification. An applicant for initial certification shall apply for initial certification on approved forms and meet the eligibility requirements and fulfill all the requirements of subsection E(2)(a). ~~Any person if qualified pursuant to subsection E(2)(a) or (b) of this code section may apply for certification.~~

~~a. Qualification for Individual Certification. To become certified or eligible for certification an applicant shall meet the eligibility requirements and fulfill all the requirements of subsection E(2)(c)(1) through (7) of this code section and, pursuant to~~

~~Rule 4(d) and Rule 4(e), Arizona Rules of Civil Procedure~~:

(1) ~~. . . has been a bona fide resident of the State of Arizona for at least one year immediately preceding the application . . .” for certification; and~~
~~(2) . . . shall be not less than twenty-one (21) years of age . . . .”~~

a. Eligibility for Initial Certification. The applicant shall:

(1) Be at least twenty-one years of age;
(2) Be a citizen or legal resident of the United States; and
(3) Possess a high school diploma or a general equivalency diploma evidencing the passing of the general education development test;

b. Government Employee Process Servers.

(1) An individual who serves process entirely within the scope of the individual’s responsibility as a government employee shall apply for certification and demonstrate the ability to pass the examination and meet certification criteria. As provided in A.R.S. § 11-445~~(H)~~(I), a government employee shall submit a completed fingerprint card and pay the applicable fees pursuant to subsection E(2)(c)~~(4)~~(3) ~~of this code section~~. Government employee process servers are not subject to any fees other than the fingerprint fee.
(2) A government employee process server may carry any employer-issued identification that accurately identifies the employee as a government employee process server in addition to the identification card issued by the clerk ~~of the superior court~~ pursuant to subsection E(4)(a) ~~of this code section~~.
(3) Government employee process servers who serve process in any capacity outside the scope of employment as a government employee process server shall obtain certification pursuant to this code section and shall follow all policies that apply to private process servers when serving process outside the scope of employment as a government employee process server.

c. ~~Procedures for~~ Application for Initial Certification. ~~To apply for certification, an~~ An applicant shall:

(1) Provide a completed application for certification ~~on~~ in an approved ~~form~~ format obtained from and filed with the clerk ~~of the superior court~~ in the county of residence of the applicant. From and after January 1, 2013, a non Arizona resident may apply for certification in any county. ~~The applicant shall sign the application and have it duly verified under oath;~~ The applicant shall submit documentation of U.S. citizenship or alien status, with the application, in compliance with A.R.S. § 41-

1080;

(~~2~~) ~~Execute an affidavit stating, pursuant to Rule 4(e), Arizona Rules of Civil Procedure . . . that the applicant will well and faithfully serve process in accordance with the law . . .” and the applicant is and was a legal resident of the State of Arizona for at least one year prior to application and has continually resided in Arizona during this time period. The affidavit may include relevant language stating the applicant understands the need to be available to testify and that providing testimony regarding the service of process is a common and inherent duty to this profession;~~

(2~~3~~) Pass an examination for initial certification, ~~administered by the clerk of the superior court~~ as prescribed in subsection E(3) ~~of this code section~~;

(3~~4~~) Pursuant to A.R.S. § 11-445~~(H)~~(I):

> ~~. . .~~[F]~~f~~urnish a full set of fingerprints to enable a criminal background investigation to be conducted to determine the suitability of the applicant. The completed applicant fingerprint card shall be submitted with the fee prescribed in section § 41-1750 to the department of public safety. The applicant shall bear the cost of obtaining the applicant’s criminal history record information. The cost shall not exceed the actual cost of obtaining the applicant’s criminal history record information. Applicant criminal history records checks shall be conducted pursuant to section § 41-1750 and Public Law 92-544~~;~~.

(a) The applicant is responsible for providing the clerk ~~of the superior court~~ with ~~a~~ readable fingerprints ~~card~~. The applicant shall pay all costs or fees attributable to any subsequent refingerprinting and resubmission of fingerprints due to unreadable prints. ~~The applicant shall only use the fingerprint card issued in the application packet.~~ A law-enforcement agency shall perform the fingerprinting;

(b) The clerk ~~of the superior court~~ shall submit completed applicant fingerprints ~~cards~~ and the fees to the Arizona Department of Public Safety (ADPS). Pursuant to A.R.S. § 11-445~~(H)~~(I), “~~. . .~~The department of public safety is authorized to exchange the submitted applicant fingerprint card information with the federal bureau of investigation for a federal criminal records check.~~. . .;~~”;

(c) If definitive fingerprints are not obtainable, the clerk ~~of the superior court~~ shall require the applicant to make a written statement, under oath, that the applicant has no prior arrests, charges, indictments, or felony or misdemeanor convictions other than as disclosed on the application. If the applicant is unable to provide this statement, the clerk ~~of the superior court~~ shall refuse to accept the application;

(4~~5~~) Provide additional background information, upon ~~Upon~~ the request of the presiding judge, clerk, or designee~~, provide additional background information~~;

(5~~6~~) Pay all fees as authorized by law to the clerk ~~of the superior court~~ pursuant to A.R.S. § 12-284; and

(6~~7~~) ~~Provide two color photographs, (2" X 2"), and references as required by policy adopted by the director.~~ Provide photographs of a number and in the format prescribed in policies adopted by the director.

3. Examination.

a. Initial Certification State Examination. Each applicant for certification ~~or renewal~~ shall ~~personally~~ take and pass the initial certification state examination provided by the director ~~and administered and scored by the clerk of the superior court~~. The clerk ~~of the superior court~~ shall ~~give~~ administer the initial certification state examination to each applicant ~~an initial examination~~.

b. The clerk shall communicate the applicant's passage or failure of the examination in writing to the applicant not more than ten days from the date the applicant took the examination:

(1) The applicant will not receive the examination score.
(2) If the applicant fails the examination, the clerk shall inform the applicant that a reexamination is required to meet all qualifications for initial certification and shall provide the applicant with information on the procedures for reexamination.
(3) An applicant may, on written request, review the applicant's answer sheets and grades under the terms and conditions prescribed by the director.
(4) The applicant shall not copy materials provided for the applicant's review.
(5) The applicant shall conduct the review during business hours in the presence of the clerk.

~~b. Reexamination. If the applicant fails the initial examination, the applicant may sit for one reexamination. The examination provided to the applicant for reexamination shall be a different examination than the one the applicant used for the initial examination. The applicant shall take the reexamination within 90 days of the date of filing the application. If the applicant fails the reexamination, the applicant shall wait 90 days from the date of the reexamination to submit a request for an additional reexamination pursuant to subsection E(3)(b)(1) of this code section.~~

~~(1) The applicant may submit a request in writing addressed to the presiding judge requesting consideration for an opportunity to reapply and sit for the examination an additional time. Proof of attendance and satisfactory completion shall accompany the written request for a course of study specific to the private process server profession. If the presiding judge approves reexamination, the entire application process begins again, including the payment of fees. The presiding judge has the discretionary authority to deny or approve a request for reexamination.~~

c. Reexamination. If the applicant fails the initial certification state examination on the first attempt, the applicant may retake the examination one time under the following conditions:

(1) The applicant is not otherwise disqualified from retaking the examination;

(2) The applicant takes the reexamination within 90 days of the date of filing the application;
(3) The applicant is provided and shall take a different examination than the one the applicant used for the initial reexamination;
(4) If the applicant fails the reexamination, the applicant shall wait 90 days from the date of reexamination to submit a written request for an additional reexamination under the following conditions:
(a) The applicant may submit a request in writing addressed to the presiding judge requesting consideration for an opportunity to reapply and sit for the initial certification state examination for a third time;
(b) Proof of attendance and satisfactory completion shall accompany the written request for a course of study specific to the private process server profession to demonstrate the circumstances and reasons for believing the applicant now possesses the knowledge of the minimum competencies as a private process server to pass the examination; and
(c) If the presiding judge grants approval for the applicant to take the examination for a third time, the entire application process begins again, including the payment of fees. The presiding judge may deny or approve a request for reexamination. The decision by the presiding judge to deny the applicant's request to sit for a third examination is final and there is no right to a hearing. If the applicant's request to sit for a third examination is denied, the applicant may not file a new application until twelve months after the presiding judge's decision to deny.

~~c~~d. The director shall provide multiple versions of the initial certification state examination to the clerk ~~of the superior court,~~ and the clerk ~~of the superior court~~ may not use any other examinations. Applicants and the public may not obtain copies of the examination or the answer sheet.

~~d~~e. The director shall establish the passing score on the initial certification state examination.

~~e~~ ~~The clerk of the superior court shall communicate the applicant's examination score verbally or in writing to the applicant not more than ten days from the date the applicant took the examination. If the applicant passes the examination score, the applicant will receive the examination score. If the applicant fails the examination, the clerk of the superior court shall provide the applicant with the examination score, an indication of the general areas of the statutes, rules, code sections and case law where the applicant missed questions and the procedures for reexamination.~~

~~(1) An applicant may, on written request, review the applicant's examination papers and grades under the terms and conditions prescribed by the director.~~
~~(a) The applicant shall not copy materials provided for the applicant's review.~~
~~(b) The applicant shall conduct the review during business hours in the presence of~~

~~program staff.~~

f. An applicant is disqualified from taking any future examination if the presiding judge, based upon information forwarded to the presiding judge by the clerk, determines the applicant engaged in fraud, dishonesty, or corruption while taking the examination or any subsequent examination.

4. Decision Granting ~~Provisional and Standard~~ Certification.

a. If the presiding judge is satisfied an applicant meets the qualifications for certification, the clerk ~~of the superior court~~, upon order of the judge, shall promptly issue certification with an identification card to an applicant qualified for certification in accordance with this code section. Pursuant to Rule 4(e), Arizona Rules of Civil Procedure:

> ~~. . .~~ [U]~~u~~pon approval of the court or presiding judge thereof, . . . the applicant shall . . . be registered with the clerk as a private process server until such approval is withdrawn by the court in its discretion. The clerk shall maintain a register for this purpose. The private process server shall be entitled to serve in such capacity for any court of the state anywhere within the State.

~~a. Provisional Certification. The presiding judge may grant provisional certification pending receipt of the information requested in the criminal history record check if the applicant provides a completed application, fingerprint card and successfully passes the examination, pursuant to this code section. Before granting provisional certification, the presiding judge may require additional background information reasonably necessary to determine if the applicant meets the qualifications specified in this code section. Provisional certification shall expire 120 days after it is granted unless the presiding judge extends the time period at the judge's discretion.~~

b. ~~Standard~~ Certification. Upon receipt of the state and national criminal history records checks, pursuant to ~~the~~ A.R.S. §§ 41-1750 and -1758, and applicable federal laws, the presiding judge shall consider the information and grant or deny ~~the standard~~ certification. Before granting ~~standard~~ certification, the presiding judge may require additional background information reasonably necessary to determine if the applicant meets the qualifications specified in this code section. For good cause shown, the presiding judge may grant certification to an applicant, pending receipt of the national criminal history record checks, if there is a delay in the processing of the criminal history checks that is beyond the control of the applicant or the court.

c. The presiding judge may transfer the certification of an individual to the county of residence or another county if appropriate.

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

5. Denial of Initial Certification. The presiding judge:

a. 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 subsection (E) or has not submitted a complete application with all deficiencies corrected, with the applicable documents and fees.

~~a~~b. The presiding judge may refuse to certify an applicant if one or more of the following is found:

(1) Material misrepresentation, omission, ~~or~~ fraud, dishonesty, or corruption on the part of the applicant in the application for, or attempt to obtain, certification, including the examination;
(2) A record of any act constituting material misrepresentation, omission, dishonesty, corruption, or fraud on the part of the applicant in business or financial matters;
(3) A record of conduct showing the applicant is incompetent or a source of injury and loss to the public;
~~(4) A record of repeated complaints by the public or the court;~~
~~(5)~~(4)A record of conviction by final judgment of a misdemeanor or felony, if the crime has a reasonable relationship to the practice of the private process server profession or occupation, regardless of whether civil rights have been restored. Pursuant to A.R.S. § 13-904(E), if the person's civil rights have been restored and there is no reasonable relationship to the practice of the private process server profession or occupation, the presiding judge shall not deny certification solely based on the record of conviction;

(5~~6~~)A record of denial, revocation, suspension, or any disciplinary action ~~censure~~ of any professional or occupational license or certificate of the applicant by any federal, state, or local government. The judge shall consider whether the underlying conduct in any other disciplinary action is relevant to certification as a private process server;
(6) A record of a termination, suspension, probation, or any other disciplinary action regarding past employment if the underlying conduct is relevant to certification as a private process server;
(7) The applicant has been found civilly liable by final judgment in an action involving fraud, misrepresentation, material omission, misappropriation, theft, or conversion;
(8) The applicant is currently on probation or parole or named in an outstanding arrest warrant;
~~(9) The applicant has not submitted fingerprints pursuant to subsection E(2)(c)(4) and the presiding judge has not received and reviewed the criminal background~~

~~analysis, or~~

(9)~~(10)~~The applicant has violated any Arizona law, Arizona Rules of Court, ~~and~~ this code section, or court orders governing private process servers~~.~~;

(10)The applicant has violated any decision, order, or rule issued by a professional regulatory entity;

(11) The applicant has violated any order of a court, judicial officer, or administrative tribunal;

(12) The applicant has made a false or misleading statement or verification in support of an application for a certificate filed by another person;

(13)The applicant has made a false or misleading oral or written statement to judicial officers, judicial staff or division staff;

(14)The applicant failed to disclose information on the certification application subsequently revealed through the background check; or

(15)The applicant failed to respond or furnish information to the presiding judge, clerk, or judicial staff 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.

c. The presiding judge shall 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)(5)(b)(4):

(1) The applicant's age at the time of the conviction;

(2) The applicant's experience and general level of sophistication at the time of the pertinent conduct and conviction;

(3) The degree of violence, injury, or property damage, and the cumulative effect of the conduct;

(4) The applicant's level of disregard of ethical or professional obligations;

(5) The reliability of the information regarding the conduct;

(6) If the offenses involved fraud, deceit, or dishonesty on the part of the applicant resulting in harm to others;

(7) The recency of the conviction;

(8) Any evidence of rehabilitation or positive social contributions since the conviction occurred as offered by the applicant;

(9) The relationship of the conviction to the purpose of certification;

(10)The relationship of the conviction to the applicant's field of certification;

(11) The applicant's candor during the application process;

(12)The significance of any omissions or misrepresentation during the application process, and

(13)The applicant's overall qualifications for certification separate from the conviction.

~~b. An applicant's failure to disclose information on the application that is subsequently revealed through the fingerprint background check may constitute good cause for the~~

~~presiding judge to automatically deny certification.~~

~~c. Mandatory Denial. The presiding judge shall refuse to certify the applicant if the applicant does not meet the qualifications or eligibility~~.

d. The presiding judge shall promptly notify all applicants denied certification of the reasons for the denial, and the applicant's right to a hearing.

e. An applicant is entitled to a hearing, pursuant to this ~~code section~~ subsection, on the decision to deny certification upon written request received within fifteen days after receipt of notice of the denial. The applicant is the moving party at the hearing and has the burden of proof.

f. Computation of Time. For the purposes of this 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. When the period of time specified or allowed, exclusive of any additional time allowed under subdivision (e) of this rule, is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When the 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.

F. Role and Responsibilities of Certificate Holders.

1. Code of Conduct. Each certified process server shall adhere to the code of conduct in subsection (J) ~~incorporated as Appendix A~~.

2. Conflict of Interest. Pursuant to Rule 4(d), Arizona Rules of Civil Procedure, "~~. . .~~ a private process server ~~. . .~~" "~~. . .~~ [S]~~s~~hall not be a party, an attorney, or the employee of an attorney in the action whose process is being served."

3. Identification Cards.

   a. The identification card is the only official process server identification the court shall issue pursuant to subsection E(4) ~~of this code section~~. A certified process server shall carry the identification card at all times when serving process and promptly display it when requested by an interested party. This is the only form of identification a certified

process server may use except government employee process servers who may use a government issued identification card in conjunction with the private process server identification card.

b. Certified private process servers shall report lost or stolen identification cards to the issuing clerk ~~of the superior court~~ within three days of discovery of the loss. Upon filing an affidavit of loss with the clerk ~~of the superior court~~ and payment of any applicable fee, the clerk ~~of the superior court~~ shall issue a replacement identification card.

c. Upon suspension or revocation of certification, the certificate holder shall surrender the issued identification card to the clerk ~~of the superior court~~ within three days.

4. Change of Name or Address. ~~All~~ A certificate ~~holders~~ holder shall notify the clerk ~~of the superior court~~ in the county of certification of any change in the legal name, business address, mailing address, ~~or~~ home address, email address, or phone number of the certificate holder within 30 days of any change.

5. Assumed 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.

6. Fees. The applicant shall pay all required fees for certification, examination, and renewal of certification. The clerk ~~of the superior court~~ shall collect in advance these fees, which are non-refundable. Pursuant to A.R.S. § 11-445~~(H)~~(I), "~~. . .~~ A private process server may charge such fees for services as may be agreed upon between the process server and the party engaging the process server."

7. Continuing Education. Certified private process servers shall complete ten hours of continuing education each twelve months and shall submit documentation of completion of this continuing education in ~~on~~ a ~~form~~ format approved by the director with the application for renewal of certification. Certified private process servers shall complete continuing education classes that are relevant to the work of a process server, pursuant to subsection L ~~policies adopted by the director~~.

8. Employment Status of Private Process Servers.

a. Certified private process servers are not employees of the court, are not appointed by the court and may not in any way represent themselves as such.

b. Private process servers may not, in any way, represent themselves as "peace officers" unless they are peace officers pursuant to Arizona or federal law. Approval as a certified private process server does not, in itself, confer peace officer status on the holder.

G. Renewal of Certification.

1. Expiration Date ~~of Certification~~. All certificates expire at midnight, every three years from date of issuance. All certifications shall continue in force until expired, voluntarily surrendered, placed on inactive status, suspended, or revoked.

   a. ~~All certificates expire at midnight, every three years from date of issuance. All certifications shall continue in force until expired, suspended, revoked or terminated. A certificate shall expire as of the expiration date unless the certificate holder submits a renewal application and pays the accompanying fees by the expiration date.~~ When a private process server has filed a timely and complete ~~completed~~ application for renewal ~~prior to the expiration of the existing~~ of certification, the existing certification does not expire until the administrative process for review of the renewal application has been completed. ~~presiding judge has approved or denied the application.~~

   b. The presiding judge may request an informal interview with the applicant for renewal 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.

   ~~b~~c. If the presiding judge denies the renewal application, the existing certification does not expire until the last day for seeking a hearing on the decision to deny, pursuant to subsection H or, if a hearing is requested, until the final decision is made by the presiding judge pursuant to subsection H.

   ~~c. The presiding judge shall treat a renewal application filed after the expiration date as a new application.~~

   d. The certificate of a certificate holder who does not supply a complete and timely renewal application and payment of the renewal fee shall expire as of the expiration date of the certificate. If the certificate holder files an application within twelve months after the expiration of the certificate, the presiding judge shall consider the length of time that has lapsed since the expiration of the certificate, the private process server's stated reasons for failing to renew the certificate timely, and the process server's compliance with all other provisions of this code section, including the completion of continuing education credits. The presiding judge may require the private process server to submit additional information or complete additional continuing education before renewing the certificate, or any other actions the judge deems appropriate. The presiding judge shall not allow a certified private process server to retake the initial certification examination as an alternative to completing continuing education credits.

   ~~d~~e. The expiration provisions described in subsection G(1)(a) ~~of this code section~~ do not affect the authority of the presiding judge to take disciplinary action, including suspension or revocation of the certification of a certificate holder if a complaint or investigation is pending prior to the expiration date.

2. Voluntary Surrender. A certificate holder in good standing may voluntarily surrender a certificate; however, this surrender is not valid until accepted by the presiding judge. The presiding judge may require additional information ~~which is~~ reasonably necessary to determine if the certificate holder has violated any provision of the statutes, court rules, and this code section. ~~The presiding judge shall, within 120 days of the voluntary surrender of the certification, either file a notice of hearing regarding a complaint and disciplinary action, or accept the surrender.~~ 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. If the presiding judge accepts the voluntary surrender, the clerk shall designate the certificate of the certificate holder as a "surrendered certificate holder in good standing." The presiding judge shall notify the certificate holder in writing within ten days after the acceptance of the surrender. The clerk shall update the list of certified private process servers to reflect this change in status and shall notify division staff.

   b. The presiding judge shall not accept the surrender if there is a complaint pending against the certificate holder. However, this does not preclude the presiding judge for entering into a consent agreement to resolve the pending complaint, by terms including the voluntary surrender of the certificate, pursuant to subsection H.

   c. The presiding judge shall, within 120 days of the voluntary surrender of the certification, either accept the surrender or institute disciplinary proceedings pursuant to subsection H. If the presiding judge subsequently imposes a sanction pursuant to subsection H upon the certificate of the surrendered certificate holder, the clerk shall change the status of the certificate holder from "surrendered certificate holder in good standing" to that of a person so disciplined.

3. Application. A certified private process server whose certificate is in good standing may renew by filing a completed certification application for renewal, paying all fees, ~~two color photographs (two inches by two inches)~~ and submitting all required documents, including documentation of completion of the required hours of continuing education pursuant to subsection L ~~of this code section~~. The applicant shall file the application with the clerk ~~of the court~~ in the county of residence of the applicant. From and after January 1, 2013, a non Arizona resident who has been granted certification as a private process server, shall apply for renewal of certification in the county where the initial application for certification was filed and certification was granted.

4. Additional Information. Before granting renewal of certification, the presiding judge may require additional information reasonably necessary to determine if the applicant continues to meet the qualifications specified in this code section. This may include fingerprinting, reexamination, ~~and~~ background information, and updated photographs.

5. Decision Regarding Renewal.

   a. If the presiding judge is satisfied that the applicant continues to meet all qualifications for certification, as specified in subsection E(2) ~~of this code section~~, the presiding judge shall renew the certification of the applicant. The presiding judge may refuse to renew the certification of an applicant for any of the reasons specified in subsection E~~(5) of this code section~~. The presiding judge shall promptly notify all applicants granted renewal of certification.

   b. The presiding judge shall promptly notify an applicant denied renewal of certification, of the reasons for the denial and the applicant's right to a hearing.

   c. An applicant is entitled to a hearing, pursuant to subsection H ~~this code section~~, on the decision to deny renewal of certification upon written request received within fifteen days after receipt of notice of the denial. The applicant is the moving party at the hearing and has the burden of proof.

6. Reinstatement after Suspension, Revocation, or Expiration of Certification.

   a. A private process server whose certificate has been suspended or revoked by a final order of the presiding judge, or whose certificate has expired, or been voluntarily surrendered, may apply for reinstatement under the following conditions:

      (1) An applicant for reinstatement shall file a written application for reinstatement with the clerk, accompanied by the appropriate fees and the following documents:
         (a) The reinstatement form and a copy of the final order of suspension or revocation, or date of voluntary surrender or expiration of certification;
         (b) 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 presiding judge or date of expiration or surrender of the certificate; and the date of application for reinstatement;
         (c) 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;
         (d) 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;
         (e) 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 the clerk receives the application for reinstatement;
         (f) 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 final order of suspension until the date the clerk receives the reinstatement application;

(g) 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 the clerk receives the application for certification;

(h) 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 expiration or voluntary surrender of the certificate;

(i) A statement of facts supporting reinstatement and recertification again as a certified process server, and

(j) A statement of all facts demonstrating the applicant's rehabilitation during the period of time from the date of the presiding judge's order revoking the applicant's certificate or suspending the applicant's certificate, until the date the clerk receives the application for reinstatement or initial certification.

(2) The presiding judge may require additional information demonstrating the applicant meets the minimum competencies of the profession or occupation. The presiding judge may require the applicant sit for and pass the initial certification 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 that the applicant meets the minimum competencies of the profession or occupation. An applicant denied reinstatement by the presiding judge has the right to a hearing pursuant to subsection (H), 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.

(3) Upon submission of all reinstatement requirements of subsection (G), the applicant shall meet all requirements of initial certification pursuant to subsection (E). The applicant for reinstatement after a suspension or revocation shall also pay the fee for reinstatement.

b. The presiding judge shall not issue any certification under this section to any person whose certification has been suspended until:

(1) The person seeking reinstatement of a suspended certificate has demonstrated all the requirements of the suspension order have been met, and

(2) The person qualifies in accordance with the applicable provisions of this section.

c. The presiding judge shall not issue any certification under this section to any person whose certification has been revoked until:

(1) One year has passed from the date of the presiding judge's final order of revocation;

(2) The person seeking certification provides proof of satisfaction of any and all requirements in the order of revocation, and
(3) The person again qualifies in accordance with the initial certification provisions of subsection (E)**.**

H. Complaints, Investigation, Hearings and Disciplinary Action.

1. Complaints. Filing and General Provisions. ~~The presiding judge may initiate or accept complaints concerning private process servers and initiate disciplinary action. The county where the basis for the complaint or discipline occurred shall handle all complaints filed against private process servers. All judicial officers and their designee shall, and any person may, notify the presiding judge if it appears a certificate holder has violated this code section. A complainant shall make the complaint in writing with sufficient specificity to warrant further investigation. The complaint shall include the name and telephone number of the complainant.~~

a. Filing of Complaint. All judicial officers, clerks of court, court employees, and certificate holders shall, and any person may, notify the presiding judge if it appears a certificate holder has violated applicable statutes, court rules, or this code section. The complainant shall make the complaint in writing with sufficient specificity to warrant further investigation. The complaint shall include the name, telephone number, and address of the complainant. The complainant shall file the complaint with the clerk in the county where the alleged violation by the certified process server occurred. The clerk shall forward the complaint to the presiding judge.

~~a. A certificate holder is subject to disciplinary action if the presiding judge finds one or more of the following applies to the certificate holder:~~

~~(1) Wilful violation of or wilful noncompliance with a court order, any court rule, Arizona law, or this code section;~~
~~(2) The existence of any cause for which original certification or any renewal of the certification could have warranted denial as described in subsection E(5) or G(5) of this code section;~~
~~(3) Failure to perform any duty to discharge any obligation required by this code section;~~
~~(4) Violation of any federal or state statute, administrative order, rule, code provision or policy regarding service of process or regulating the profession;~~
~~(5) Falsification or misrepresentation of any document potentially filed with the court;~~
~~(6) Engaging in the practice of law or otherwise providing legal advice while serving process;~~
~~(7) Advertising or otherwise representing services in a false, fraudulent or misleading manner;~~
~~(8) Display of a uniform, title, insignia, badge, business card, identification card or other means of identification or making a statement that would lead a person to believe the certificate holder is an employee of the federal government, state government or any~~

~~political subdivision of state government unless authorized by proper authorities to do so;~~

~~(9) Use of letterhead, business cards, or advertising on any media in any manner to represent the certificate holder is an employee of the federal government, state government or any political subdivision of a state government unless authorized by proper authorities to do so;~~

~~(10)Failure to display the identification card issued to persons who may have reasonable cause to verify the validity of the certification;~~

~~(11)Failure to cooperate in an inquiry, investigation or disciplinary action by:~~

~~(a) Not furnishing papers or documents;~~

~~(b) Not furnishing in writing a full and complete explanation of a matter contained in a complaint when requested;~~

~~(c) Not responding to subpoenas issued, regardless of whether the recipient of the subpoena is accused in the proceeding;~~

~~(12)Commission of any act involving moral turpitude, dishonesty or corruption whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action;~~

~~(13)Unprofessional conduct, including the failure to exercise appropriate judgment regarding service of process; and~~

~~(14)Wilful violation or wilful noncompliance of any other provision of the Code of Conduct.~~

b. Complaints Initiated by the Presiding Judge. In accordance with subsection H, the presiding judge may direct court staff to investigate allegations of acts of misconduct or violations of statutes, court rules, or this code section 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.

c. Anonymous Complaints. The presiding judge 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 regarding the expiration of the certificate do not affect the authority of the presiding judge to:

(1) Initiate a complaint;
(2) Investigate a complaint; or
(3) Take disciplinary action regarding the certificate of a certificate holder.

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 the presiding judge, receive notice of any public proceeding concerning the complaint or any consent agreements. The complainant submits to the jurisdiction of the court for all purposes relating to the proceedings.

f. Non-abatement. Unwillingness, failure of the complainant to cooperate with judicial officers, judicial staff, staff of the clerk of the court, or division staff, 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. Information or documents obtained or generated by the presiding judge, clerk, director, division staff, or court employees during an open investigation, or received in an initial report of misconduct, are confidential except as mandated by court rules or this section.

(1) Confidential information may be disclosed during the course of an open investigation:
(a) To judicial officers, court staff, the attorney general, county attorney, law enforcement, and other regulatory officials;
(b) If the presiding judge 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) Upon a determination of probable cause, 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 presiding judge 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) The address and phone number of the complainant shall remain confidential.

2. Grounds for Discipline. A certificate holder is subject to disciplinary action if the presiding judge finds the certificate holder has engaged in one or more of the following:

a. Failed to perform any duty or discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, or this code section;

b. Failed to cooperate or supply information to the presiding judge, clerk of the court, judicial staff, or division staff by the specific time stated in any request;

c. Aided or assisted another person to provide services requiring certification if the other person does not hold the required certification;

d. Conviction of a criminal offense while certified by final judgment of a felony relevant to certification;

e. Failed to provide information regarding a criminal conviction;

f. Exhibited gross negligence;

g. Exhibited incompetence in the performance of duties;

h. Evaded service of a subpoena or notice of the presiding judge;

i. The existence of any cause for which original certification or any renewal of the certification could have warranted denial as described in subsection E or G.

j. 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 certificate;
(2) Failed to comply with any court order or other regulatory agency order relevant to private process servers;
(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 terms of a consent agreement or restriction of a certificate;
(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 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) Performed the responsibilities or duties of the profession or occupation when medically or psychologically unfit to do so;
(14) Engaged in habitual substance abuse;
(15) Engaged in undue influence over a client or customer to the benefit, financial or otherwise, of the certificate holder or a third party; or
(16) Violated any statute, court rule, or this code section regarding a confidentiality requirement.

~~2~~3. Initial Screening. The presiding judge shall determine if a complaint warrants further

investigation and evaluation. If the complaint is outside the jurisdiction of the Private Process Server Program, the presiding judge shall dismiss the complaint. The presiding judge may refer the complaint to another state agency or entity with jurisdiction, if appropriate.

~~3~~4.Preliminary Investigation. If warranted, the presiding judge shall have a prompt, discreet and confidential investigation of the complaint made.

~~4~~5. Request for Response from Certificate Holder. The presiding judge shall have the complaint sent to the certificate holder within a reasonable period of time after commencement of the investigation and shall require the certificate holder provide a written response. The presiding judge shall not proceed with disciplinary action under this code section without providing this notice and the opportunity to respond.

~~5~~6.Review of Complaint and Investigation. Upon completion of an investigation, the presiding judge may:

a. Determine no violation exists and dismiss the complaint;

b. Order further investigation;

c. Determine the complaint is appropriate for resolution without proceeding to formal disciplinary proceedings, or

d. Determine there is probable cause for belief in the existence of facts warranting formal disciplinary proceedings.

~~6~~7. Emergency Suspension. If the presiding judge finds the public health, safety or welfare requires emergency action and incorporates a finding to that effect in the order, the presiding judge may order ~~a summary~~ emergency suspension of the certification of a certificate holder pending proceedings for revocation or other action. The presiding judge shall institute these proceedings within 30 days of the issuance of the emergency suspension order. Upon order of the presiding judge, the clerk ~~of the superior court~~ shall immediately notify all presiding judges ~~of the superior court~~, other clerks ~~of the superior court~~ and the ~~program coordinator~~ division staff of any ~~summary~~ emergency suspension of a certificate holder. Upon receipt of the notice of emergency suspension, division staff shall immediately update the website listing of the private process server to designate the emergency suspension of the certificate.

~~7. Confidentiality. Information or documents obtained or generated by the presiding judge, clerk of the superior court, director, program coordinator or court employees during an open investigation or received in an initial report of misconduct are confidential except as mandated public record by the Arizona Supreme Court Rules. Upon determination that a complaint requires formal disciplinary action and upon resolution of any complaint or investigation, records obtained during the investigation become open and are available for~~

~~public inspection.~~

8. Formal Disciplinary Proceedings.

   a. Commencement. The presiding judge may commence formal proceedings if the judge finds reasonable cause to believe the certificate holder has committed misconduct under this code section and the complaint is not appropriate for resolution by informal discipline. The presiding judge may, upon commencement of formal proceedings, select a hearing officer or other appropriate designee pursuant to subsection H(10) ~~of this code section~~. For uniformity, consistency and ease of reading, the term "hearing officer" throughout this code section ~~regarding disciplinary action~~ refers to the presiding judge, the hearing officer or other officer designated by the presiding judge.

   b. Notice to Certificate Holder. The presiding judge shall have the formal statement of charges served on the certificate holder with a notice advising the certificate holder of the certificate holder's rights pursuant to this code section. This notice shall comply with the provisions of subsection H(12) ~~of this code section~~.

9. Request for Hearing. All demands for hearing shall specify:

   a. The section of this code section that entitles the person to a hearing;

   b. The factual basis supporting the request for hearing, and

   c. The relief demanded.

10. Appointment of Hearing Officer. The presiding judge may appoint a judge or a hearing officer to hold a hearing when required to do so pursuant to this code section, or upon written demand by a person entitled to a hearing, pursuant to this code section.

11. Time line for Hearing. The hearing officer shall ensure the hearing is held within 45 days of receipt of the request, if the request is made by a certificate holder, unless postponed by mutual consent for good cause. If the request is from the presiding judge, the hearing officer shall hold the hearing as soon as practical at the discretion of the hearing officer.

12. Notice of Hearing. The hearing officer shall prepare and give the parties notice of the hearing at least fifteen days prior to the date set for the hearing. The notice shall include the following information:

    a. A statement of the time, place and nature of the hearing;

    b. A statement of the legal authority and jurisdiction for conduct of the hearing;

c. A reference to the particular sections of the statutes, this code section and policies involved;

d. A short and plain statement of the allegations or factual basis supporting the relief requested. Amendments to the statement are permissible, and

e. If the hearing date has not previously been set, a statement indicating the certificate holder will be afforded a hearing upon request if the certificate holder makes the request in writing within ten days of receipt of the notice.

f. Personal service or service by certified mail, return receipt requested to the last business address of record with the clerk of the superior court, will accomplish service of the notice. For proof of service, a verified statement service was completed shall be filed with the hearing officer. Service by mail is complete upon deposit in the United States mail.

g. If a party is represented by an attorney, the attorney shall receive service.

13. Filings, Answers and Pleadings. A party shall file answers to notices within ten days after the date the notice is served, unless otherwise ordered by the hearing officer. Answers shall comply with Rule 8 of the Arizona Rules of Civil Procedure. If a party fails to file an answer within the time provided, the person is in default and the hearing officer may determine the proceeding against the party and admit one or more of the assertions contained in the notice. The hearing officer shall determine any defenses not raised in the answer are waived.

    a. Parties shall file all motions at least five days prior to the scheduled hearing date, unless otherwise ordered by the hearing officer.

    b. Parties shall file responses to motions within five days of the filing of the motion.

    c. The hearing officer and all parties to the proceeding shall receive copies of all filings.

    d. All filings shall comply with Rule 5(h), Arizona Rules of Civil Procedure.

14. Discovery.

    a. No discovery is permitted, except as provided in this code section, unless mutually agreed to by the parties or permitted 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. The hearing officer, on the hearing officer's motion or upon request, may require, prior to hearing, the disclosure of documentary evidence intended for use at the hearing, provided the evidence is not privileged.

d. Parties may take depositions for use as evidence of witnesses who cannot be subpoenaed or are otherwise unable to attend the hearing. To take a deposition, a party shall file with the hearing officer a written motion, with 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.

e. Parties shall file responses to requests for depositions, including motions to quash, within five days after the filing of the request for deposition.

f. If a deposition is permitted, a subpoena and written order shall be issued. The subpoena and order shall identify the person to be deposed, scope of testimony to be taken, documents, if any, to be produced, and 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.

15. Subpoenas. For the purposes of investigations, hearings or other proceedings under this code section, the hearing officer may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual concerning the subject of any hearing or investigation. Subpoenas shall be issued, served and enforced in compliance with 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 subpoenas.

16. Prehearing Conference. The hearing officer may order 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 any or all of the following actions:

a. To reduce or simplify the issues for adjudication;

b. To dispose of preliminary legal issues, including ruling on pre-hearing motions;

c. To stipulate to the admission of uncontested evidence, facts and legal conclusions;

d. To identify witnesses, and

e. To consider any other matters that will aid in the expeditious conduct of the hearing.

17. Procedure at Hearings.

a. The hearing officer shall preside over the hearing. The hearing officer shall have the authority to decide all motions, conduct prehearing conferences, 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. 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; and

(2) Any person may represent themselves or appear through counsel. An attorney who intends to appear on behalf of a party shall promptly notify the hearing officer, providing the name, address and telephone number of the party represented and the name, address and telephone number of the attorney.
(3) All persons appearing before the hearing officer in any proceeding shall conform to the conduct expected in the Arizona Superior Court.

c. Conduct of Hearing.

(1) The hearing officer may conduct the hearing in an informal manner and without adherence to the rules of pleading or evidence. The hearing officer shall require 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. All hearings are open to the public.
(2) The hearing officer shall require that all testimony considered 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.

d. Record of Hearing.

(1) The hearing officer shall ensure the oral proceedings or any part of the oral proceedings are electronically recorded and transcribed on request of any party. The party making the request shall pay the cost of the transcript.
(2) A competent ~~court~~ reporter shall make a full stenographic record of the proceedings, if requested by a party, within five days prior to a hearing. The cost of the transcript is the responsibility of the requesting party. The hearing officer may require the

prepayment or a monetary deposit to cover the cost of the transcript. If transcribed, the record is a part of the court's record of the hearing and any other party with a direct interest shall receive a copy of the stenographic record, at the request and expense of the party. If no request is made for a stenographic record, the hearing officer shall ensure the proceedings are recorded as described in subsection H(17)(d)(1) of this code section.

18. Rehearing. The hearing officer may grant a rehearing or reargument of the matters involved in the hearing upon written request of a party to a hearing filing the request with the hearing officer. The party shall make the request within fifteen days after any order made pursuant to a hearing was mailed or delivered to the person entitled to receive the order. The hearing officer shall decide to grant or deny the request within 30 days of the date of filing of the request. A party shall base the request for rehearing or review upon one or more of the grounds listed in Rule 59, Arizona Rules of Civil Procedure, which materially affected the rights of a party and shall conform to the requirements of Rule 59. The hearing officer shall permit any party served with a request for rehearing to file a response within fifteen days of service.
19. Decisions and Orders. The hearing officer shall render the final decision within 30 days of the closing of the record of a hearing. The hearing officer shall render the final decision in writing and shall include findings of fact and conclusions of law, separately stated. If set forth in statutory language, a concise and explicit statement of the underlying facts shall accompany findings of fact. Parties shall receive notice of any decision or order either personally or by certified mail return receipt to the last known address.

20. Possible Actions <u>for Resolution of a Complaint.</u>

    a. Upon completion of an investigation concerning alleged misconduct by a certificate holder, which may or may not include <u>informal or formal disciplinary proceedings or</u> a hearing, the hearing officer shall do one or more of the following:

    ~~(1) Determine no violation exists and dismiss the complaint;~~
    ~~(2) Mandate additional training 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;~~
    ~~(3) Issue a letter of concern or warning; Mandate additional training Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules or this section and order an emergency summary suspension;~~
    ~~(4) Place restrictions on a certificate;~~
    ~~(5) Suspend a certificate for a period not to exceed three years,~~
    ~~(6) Revoke a certificate; or~~
    ~~(7) Any other action the hearing officer determines appropriate, including return or refund of service fees to a harmed person or entity. This shall not include imposition of a fine.~~

(1) Determine no violation exists and dismiss the complaint with or without prejudice;
(2) 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 (H);
(3) Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules or this code section and order an emergency suspension;
(4) Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules, this code section 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 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) Order suspension of a certificate for a set period of time not to exceed three years with specified conditions for reinstatement;
(h) Revoke a certificate with specified conditions for reinstatement; or
(i) Any other action the hearing officer determines appropriate, including return or refund of service fees to a harmed person or entity. This shall not include imposition of a fine.

~~b. The hearing officer may resolve a violation by consent order or other negotiated settlement between the parties. This order or settlement may include any of the actions listed in subsection H(20)(a) of this code section.~~

~~c~~b. The hearing officer shall issue an order specifying in what manner and to what extent any failure or violation is found and any sanctions pursuant to this code section. Any disciplinary action shall have effect statewide. The clerk ~~of the superior court~~ shall, within ~~ten~~ five days of any such action, notify in writing ~~each clerk of the superior court and the program coordinator~~ division staff of the action taken and of any subsequent changes in the status of the individual's approval to serve process. If the hearing officer issues an emergency suspension of a certificate, the clerk shall immediately notify the presiding judges, clerks and division staff of the action.

21. Procedure after Suspension or Revocation.

a. Upon suspension or revocation of any certification, the presiding judge shall have notice promptly served on the certificate holder either in person or by certified mail, return receipt requested, addressed to the last address of record with the clerk ~~program coordinator~~. Notice by mail is complete upon deposit in the United States mail.

b. The presiding judge shall only issue certification to any person whose certification had previously been revoked under this code section after the expiration of one year from the date of revocation, and after the person again qualifies in accordance with the ~~applicable~~ reinstatement provisions of this code section.

22. Filing of Special Action ~~Judicial Review~~. Decisions of the presiding judge, hearing officer or other designee regarding certification, renewal of certification, or disciplinary action pursuant to this code section are final. Parties may seek judicial review through a petition for a special action within 35 days after entry of the final order of the hearing officer. The petition for special action shall be pursuant to the Arizona Rules of Procedure for Special Actions.

I. Reserved.

~~Section 7-204: Private Process Server~~
~~Appendix A~~
~~Code of Conduct~~

J. Code of Conduct

1. Preamble. The Arizona Supreme Court adopts the following Code of Conduct to apply to all private process servers pursuant to A.R.S. § 11-445~~(H)~~(I), the Arizona Rules of Court and this code section. The purpose of this Code of Conduct is to establish minimum standards for performance by private process servers and to ensure they conduct the service of process in a professional manner.

2. ~~Standard 1.~~ Rules and Applicable Laws. The private process server shall perform all services and discharge all obligations in accordance with current Arizona and federal law, Arizona Rules of Civil Procedure, administrative orders and this code section as adopted by the Arizona Supreme Court governing the certification of private process servers. ~~a.~~ The private process server shall promptly file an affidavit of service or certificate of service or return the unserved documents.

3. ~~Standard 2.~~ Skills and Knowledge. The private process server shall demonstrate adequate skills and knowledge to perform the work of a private process server and shall seek training opportunities to maintain professional competency and growth.

   a. The private process server has an obligation to have knowledge and keep informed of current and applicable laws and court rules regarding the service of process.

   b. The private process server ~~has a responsibility to~~ shall maintain a working knowledge of proper methods of service.

c. The private process server shall possess the necessary verbal and written communication skills sufficient to perform the private process server role.

d. The private process server shall manage service proficiently. Skills required include those necessary to perform the service, maintain records, and communicate with the client in a timely fashion.

e. The private process server shall keep the client reasonably informed about the status of the service and promptly comply with reasonable requests.

f. The process server shall ensure all affidavits and certificates prepared by the private process server are complete, accurate and understandable and are timely filed with the court.

4. ~~Standard 3.~~ Professionalism. The private process server shall exercise the highest degree of professionalism in all interactions with clients, the party located, and others they come in contact with during the service. The private process server shall utilize professional judgment and discretion at all times.

a. The private process server shall handle all legal documents with care and maintain required records in a professional manner.

b. The private process server may act as a mentor to assist an inexperienced certified private process server for the purpose of increasing skill level and successful service of process.

c. The private process server shall ~~abstain from providing or offering~~ not provide or offer to provide legal advice.

d. The private process server shall not violate any rules adopted by the Arizona Supreme Court or conduct themselves in a manner that would reflect adversely on the judiciary, the courts, or other agencies involved in the administration of justice.

e. The private process server shall respect the confidentiality of information and shall preserve the clients' confidences; this duty outlasts the employment of the private process server.

f. The private process server shall maintain a professional appearance at all times.

g. The private process server shall be courteous and polite in all dealings and shall ~~abstain from using~~ not use profanity or vulgarity in contact with others.

h. The private process server shall never attempt to decide the merits of a lawsuit. The private process server shall explain the general nature of the served papers but shall

never engage in any unnecessary discussions regarding the action being served, with the persons receiving service. ~~It is only necessary for the private process server to explain the general nature of the served papers~~.

i. The process server may provide general legal information to a client and persons receiving service but shall not represent they are authorized to practice law in this state, nor shall the process server provide any kind of legal advice, opinion or recommendation about possible legal rights, remedies, defenses, options or strategies.

~~i~~j. The private process server shall know the protocol for service of process in a court building before proceeding with service and shall take appropriate steps to avoid impairing security or creating a security issue in a court building.

k. The private process server shall only serve the legal documents and papers included in the civil action for which the process server has been retained to serve process. No additional papers, advertisements or brochures are authorized to be included in the service of process.

5. ~~Standard 4.~~ Ethics. The private process server shall perform services in a manner consistent with legal and ethical standards.

a. The private process server, having located the sought-after party or persons receiving process for those persons intended for service, shall perform the service of process in a professional manner, utilizing sound judgment and avoid rudeness and unprofessional conduct.

b. The private process server shall present service in a nonjudgmental manner.

c. The private process server shall not misrepresent the private process server's qualifications, fees, or any other information relating to the role of the private process server.

d. The private process server shall not utilize certification in any manner to gain access to information or services for purposes other than those of the Private Process Server Program.

e. The private process server shall maintain the best interests of the client by maintaining a high standard of work and reporting to a client the full facts determined as a result of the work and effort expended whether they are advantageous or detrimental to the client.

6. Candor.

a. A private process server shall not knowingly:

(1) Falsify or misrepresent the facts surrounding the delivery of legal process to any person or entity;
(2) Make a false statement of material fact or law to a tribunal; or
(3) Fail to disclose a material fact to a tribunal, except as required by applicable law.

b. A private process server shall notify the presiding judge within ten days of a misdemeanor or felony conviction. The private process server shall provide this notice to the presiding judge in the county of certification of the process server.

c. A certified private process server may not wear a uniform, use a title, insignia, badge or identification card or make any statement that would lead a person to believe the certificate holder is an employee of a federal government, state government or any political subdivision of a state government unless the certificate holder is so authorized by proper authorities. No badge of any type may be used, shown or offered as identification in conjunction with the identification card or independently.

K. Reserved.

L. Continuing Education Policies

1. Purpose.

a. Service of process is integrally related to the prompt, effective and impartial operation of the judicial system. Private process servers are required to demonstrate a basic level of competency to become certified and practice in Arizona. Ongoing, continuing education (CE) is one means to ensure a certified process server maintains continuing competence as a process server after certification is obtained. It also provides opportunities for process servers to keep abreast of changes relating to the service of process, the law, and the Arizona judicial system.

b. These continuing education policies are intended to provide direction to certified private process servers, and to the presiding judges and clerks who administer the Private Process Server Program in each county; to ensure compliance with this code section regarding continuing education credits, and to provide for equitable statewide application and enforcement of the continuing education requirements.

2. Applicability. Pursuant to subsection (F), all certified private process servers shall complete at least ten hours of approved continuing education every twelve months in an area relevant to the work of a certified private process server. The private process server shall submit documentation of completion of the continuing education in an approved format with the application for renewal of certification. Pursuant to subsection G, a renewal period is for three years from the date of issuance of the certificate.

3. Responsibilities of Certified Private Process Servers.

a. It is the responsibility of each certified private process server to ensure compliance with the CE requirements, maintain documentation of completion of CE and to submit this documentation with the renewal application.

b. Upon request, each certified private process server shall provide any additional information required by the presiding judge when the judge is reviewing the renewal application and CE compliance and documentation.

c. If an activity has not been pre-approved, the rejection of any activity completed by a private process server and submitted with the application for renewal does not in any way diminish the responsibility of the process server to comply with the CE requirement.

4. Authorized Continuing Education Activities

a. CE activity shall address the areas of proficiency, competency, and performance of, and impart knowledge and understanding of the service of process, the Arizona judiciary and the legal process, and increase the participants' understanding of the responsibilities of a certified private process server and the process server's impact on the judicial process. Acceptable topics for CE activities include:

(1) Ethics for private process servers and court employees, including cooperation with lawyers, judges and fellow private process servers, professional attire, courtesy and impartiality to all litigants, information vs. legal advice and public relations;
(2) The Arizona court system, including the state and federal constitution, branches of government**,** Arizona court jurisdiction and responsibilities, Arizona tribal court system, resource materials including Arizona Revised Statutes, Arizona Rules of Court, case law, and administrative orders; and current issues in the Arizona court system; and
(3) Role and responsibilities of the certified private process server including this code section.

b. Persons developing and presenting CE activities shall have expertise in the curriculum, knowledge of adult education principles, and the ability to prepare and present educational material effectively. The education faculty presenting a CE activity should consist primarily of individuals with experience and expertise in the service of process, legal and judicial community; faculty from other disciplines is permissible when their expertise will contribute to the goals of a specific program. The CE activity shall specify for whom the program is primarily designed, the course objectives, course content and teaching methods. All CE activity shall be conducted in an organized setting free from distractions.

c. Pre-Approved Activities. Subject to the conditions specified in this policy, programs, seminars and courses of study offered or approved by the following entities are pre-approved and accredited:

(1) Arizona Private Process Servers Association (APPSA);
(2) Arizona Supreme Court Committee on Judicial Education and Training (COJET);
(3) United States Private Process Servers Association (USCRA);
(4) Arizona Courts Association (ACA); and
(5) National Association of Court Management (NACM).

d. Sponsoring Entities. Unless a CE activity has been pre-approved, entities wishing to administer a CE activity shall submit the proposed CE activity on the approved form to the division staff of the Arizona Supreme Court, Administrative Office of the Courts (AOC), for consideration prior to conducting the activity. Applications submitted by a sponsoring entity after the CE activity has been completed or conducted will be rejected.

(1) At a minimum, the proposal shall meet all requirements of this policy and shall include the following:
   (a) location, date and time of the proposed activity, with an agenda that identifies the time allocated for each topic and the time allocated for breaks and other activities that do not qualify for CE credit;
   (b) proposed audience;
   (c) course content, objectives, teaching methods and the evaluation method;
   (d) names and qualifications of the faculty;
   (e) written materials for the participants (a copy of the materials shall be included with the proposal), and
   (f) number of CE credits the sponsoring entity is recommending the AOC grant for completion of the activity.
(2) In addition, the proposal shall include a statement the sponsor agrees to assume responsibility for verifying attendance of the participants; will provide a certificate of attendance for each participant who successfully completes the activity and that upon request of the AOC, will provide any additional information requested to assist the AOC in evaluating whether to approve the activity or to ensure compliance with this policy.

e. Serving as Faculty. CE credit may be granted for serving as faculty, an instructor, speaker or panel member of an approved CE seminar directly related to the service of process. CE credit will be granted for the actual presentation time, plus actual preparation time up to two hours for each hour of presentation time. A maximum of five hours of CE credit will be granted for serving as faculty in any renewal period and a private process server may not receive credit for presenting a program repeatedly throughout the renewal period. A private process server may receive CE credit for actual presentation time for duplicate programs presented in subsequent renewals periods; but

will not be granted CE credit for preparation time for those programs.

f. Authoring or Coauthoring Articles. CE credit may be granted for authoring or coauthoring an article directly related to the service of process, if the article is published in a state or nationally recognized professional journal relating to the service of process and if the article is a minimum of one thousand words in length. A maximum of one hour of CE credit may be earned for authoring an article or articles in any one renewal period. Credit shall not be granted for the same article published in more than one publication or republished in the same publication in later editions.

g. University, College and Other Educational Institution Courses. A certified private process server may receive CE credit for a course provided by a university, college, or other educational institution if the private process server successfully completes the course with a grade of "C" or better or a "pass" on a pass/fail system. The private process server may receive CE credit upon documentation the course is relevant to the service of process. If the course is approved, credit will be awarded by multiplying the number of credit hours awarded by the educational institution by two, however, the maximum total of CE credits for completion of courses pursuant to this subsection shall not exceed 50 percent of the total number of CE hours required for the renewal period.

h. Minimum Time. Each CE activity shall consist of at least 30 minutes of "actual clock time" spent by a registrant in actual attendance at and completion of an approved CE activity. "Actual clock time" is the total hours attended, minus the time spent for introductory remarks, breaks, meals and business meetings. After completion of the initial 30 minutes of CE activity, credit may be given in fifteen minute increments. A process server may not use additional earned CE credits for subsequent renewal periods.

i. Maximum Credit. Unless a CE activity is directly related to the private process server profession, a private process server may not receive more than 50 per cent of the credit requirement for the renewal period through one activity.

j. Conferences. CE credit may be requested for attendance at a conference relevant to the work of a process server. A process server may receive 100 per cent of the CE credits for attendance at the conference, if the conference is directly related to the work of a process server. The process server must provide documentation of the specific sessions of the conference attended, with documentation of the hours for each session of the conference the process server attended. Credit will not be granted for attendance at general sessions of the conference.

k. Repeat of an Activity. Generally, credit will not be granted for process servers who repeat an activity within the same renewal period. Exceptions maybe granted if it is determined the activity is directly related to the work of a process server profession and duplication of the continuing education activity will enhance the process server's knowledge, skill and competency.

l. Documentation of Attendance or Completion. When attending or completing a CE activity, each process server shall obtain documentation of attendance or completion from the sponsoring entity. At a minimum, this documentation shall include the:

(1) name of the sponsor;
(2) name of the participant;
(3) topic of the subject matter;

(4) number of hours actually attended or the number of credit hours awarded by the sponsoring entity;
(5) date and place of the program;
(6) signature of the sponsor, or the documentation shall be an official document of the sponsoring entity; for example, a college grade report, etc.,
(7) signature of the process server, either in the space specifically provided on the form for this purpose, or the process server may sign across the documentation (for example, the college grade report) to indicate attendance and completion at the activity, and
(8) if the CE activity comprises eight or more hours of credit within one day, the documentation shall include an agenda that specifies the time allocated to each topic and the time for breaks and a lunch break.

m. A process server shall not request and credit shall not be granted if the process server attends part, but not all, of the provided activity. Notwithstanding the signature of the sponsoring entity regarding the CE credits for an activity, it is the responsibility of the process server to accurately calculate the number of hours attended, subtracting out any time for general introductions and other activities that do not qualify for CE credit.

n. Process servers requesting CE credit for self study shall submit documentation of completion on an approved form.

5. Non-Qualifying Activities. The following activities, regardless of whether or not the activity is approved for COJET credit, shall not qualify for CE credit for certified private process servers:

a. Completion of the examination required for initial certification;

b. Attendance or participation at professional or association business meetings, general sessions, elections, policymaking sessions or program orientation;

c. Serving on committees or councils or as officers in a professional organization, and

d. Activities completed as required by the presiding judge as part of a disciplinary action.

6. Decision Regarding Continuing Education Credits.

a. Upon a review of an application for renewal of certification and the required accompanying CE documentation, the presiding judge may:

(1) Approve the CE credit;
(2) Approve part but not all of the requested CE credit;

(3) Require additional information from the requester before making a decision; or
(4) Deny the CE credit.

b. The private process server shall be notified of the decision regarding the CE credit.

7. Compliance and Non-Compliance.

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a. An applicant for renewal of certification may be requested to supply additional information to verify compliance with the CE requirements. If the applicant fails to provide the requested information, the presiding judge may automatically deny the CE credit.

b. Pursuant to subsection (H)(l); a certified private process server who fails to meet the CE requirement, falsifies CE documents, willfully misrepresents CE activities and attendance at CE activities or attempts to circumvent the CE requirement by submitting an initial application for certification within twelve months of the expiration of the original certificate, is subject to denial of renewal of certification, disciplinary action, or both.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2012	_X_ Formal Action/Request __ Information Only __ Other	ACJA proposed changes to § 7-205 (Defensive Driving Program)

FROM:
Anne Hunter, Manager, Certification and Licensing Division, Administrative Office of the Courts

DISCUSSION:
The Arizona Code of Judicial Administration § 7-205: Defensive Driving Program contains provisions regulating defensive driving schools and instructors including certification requirements, codes of conduct, fee schedules, and continuing education policies. The proposed amendments establish guidelines for judges to use when considering a request for a law enforcement officer to be certified as a defensive driving instructor in ACJA § 7-205 (E)(2)(g)(1 and 2). The proposed amendment also establishes advertising restrictions including the use of the Arizona Supreme Court logo in ACJA § 7-205 (J)(1)(e) and (J)(1)(b)(4), adds language clarifying the process for positively identifying students enrolled in an on-line class in ACJA § 7-205 (E)(1)(m) and adds language clarifying the appropriate appearance and format of fee on schools' websites in ACJA § 7-205 (F)(l)(1) and (F)(5)(m). The proposed amendment also increases the reinstatement application fee from $100 to $1,000 for a defensive driving school in ACJA § 7-205 (K)(5)(d) and deletes the requirement that an instructor teach a minimum number of classes during a certification renewal cycle in ACJA § 7-205 (G)(3)(b). Finally, the amendment deletes the fee distinction in regard to the length of time from initial certification to renewal in ACJA § 7-205 (K).

Division staff has worked closely with the Defensive Driving Board, the Defensive Driving Board's Rules Subcommittee, and defensive driving school owners and instructors to develop the proposed amendment document. The proposed amendments to ACJA § 7-205 have been presented to the Limited Jurisdiction Court Committee and the Committee on Superior Court. In addition, the proposed amendments were circulated for public comment

and presented to the Defensive Driving Board. The Limited Jurisdiction Court Committee, the Committee on Superior Court, and the Defensive Driving Board voted to recommend that the Arizona Judicial Council adopt the code section proposals as written. See the attached table which contains comments received during the public comment period and the manner in which they were addressed.

RECOMMENDED COUNCIL ACTION:
Approve the proposal as presented.

2012
ACJA § 7-205 Proposed Amendments
Table of Comments Received

PARAGRAPH	COMMENT	RESPONSE
(E)(1)(m)	We feel the current student identification requirements are sufficient and should not be changed.	Change not incorporated.
(E)(2)(g)(1)	We'd like clarification regarding police officers serving as defensive driving instructors. Are police officers allowed to have both jobs simultaneously? It seems like a large potential conflict of interest.	Change not incorporated. Existing code allows an applicant for defensive driving instructor who is also currently serving as an active law enforcement officer to obtain a waiver from the presiding judge of the superior court in the county where the applicant is instructing. Applicants may not submit an application without a waiver.
(K)(5)(d)	The proposed increase in the reinstatement fee from $100 to $1,000 seems excessively steep. It may be necessary or prudent to increase this fee but not 10x.	Change not incorporated.

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TO: Members of the Judicial Council
FROM: Anne Segal, PhD

This memorandum is to strengthen understanding of the proposed amendments to the ACJA 7-205. Under the current standards, people referred to defensive driving school for traffic law violations follow a proscribed curriculum to reinforce knowledge of Arizona laws. Typically, attendance at a defense driving school is in lieu of fines for a civil traffic violation and avoids penalty points for the driver.

The proposal modifies the current defensive-driving curriculum delivery modalities for teen-age drivers. The amendments specify that traffic safety schools may seek for special certification to meet the learning needs of teen-age drivers.

In addition to being a justice court judge, I have my PhD in education. My dissertation research addressed identifying, describing and understanding the differences between educational needs of the child (pedagogy), young adult learner (teenagogy ™) and the mature adult learner (andagogy). Currently, the defensive driving schools present the materials in a manner that is appropriate for the mature adult learner (contextual), but fails to engage the young adult learner in educationally meaningful or applicable methodology.

My research studies indicated the young adult/teenager effectively engages in learning if there is discussion, visualization, and tactical reinforcement with a high quantity of personally applicable material. Peer pressure as well as peer endorsement of the concepts imbed the learning process.

The administrative amendments direct that within the time frames provided by ARS 28-3395, 60 minutes before or after the adult course, juveniles/young adults complete an appropriate content component. The regulations, as described in items (b) through (g) segments guide particular interactive learning mechanisms to reinforce topics and materials to engage and direct learning for the under-20 year old driver. To avoid the course being perceived as a video game, the regulations direct that the teenage course materials be only presented in a classroom.

In addition, the substantive information is also content and context-specific. For example, the administrative regulations direct instruction on reaction times from texting be illustrated by demonstrations. By illustration, students are instructed to text during class and try to catch a sponge -- visualizing the same reaction time needed to avoiding a collision. Illustrative learning is a key component. Instruction also focuses the consequences of strict liability for driving after drinking, the affect of fatigue when driving, decision-making when a friend is impaired .

The course material is not intended to replace the requirements for courses that enable a teenager to get a drivers license. The regulations reinforce and engage directive learning for the one-to-five-year drivers who now thinks that they are immortal because they have a license and got a traffic ticket.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 7: Administrative Office of the Courts
Chapter 2: Certification and Licensing Programs
§ 7-205: Defensive Driving

A. through D. [no changes]

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

1. Eligibility for Certification as a School. An applicant for certification as a defensive driving school shall:

   a. through i. [no changes]

   j. Provide articles of incorporation and letters of good standing from the Arizona Corporation Commission ~~or the Secretary of State, or if the applicant uses ADM, from comparable entities of the state where the business is incorporated or licensed~~.

   k. [no changes]

   l. File an administrative, operational and financial procedures manual detailing the applicant's processes for compliance with all Arizona statutes, ACJA § 7-201, this section and court or local rules. The administrative procedures manual shall include specific detail on the process an ADM school shall use to determine a positive identification of the individual enrolled in the defensive driving course, in compliance with subsection (F)(25)(d)(5)(b). This detail shall include whether or not the ADM school will utilize a third party process for verification of the user identity. Once approved, a school may not change the procedures until the school obtains approval from the board.

   m. through x. [no changes]

2. Eligibility for Certification as an Instructor. In addition to the requirements of ACJA § 7-201(E), for qualification as an instructor, an individual shall:

   a. Be at least 21 years old.

   b. Have a high school diploma or general equivalency diploma.

   c. Be a legal resident or citizen of the United States.

   d. Hold a valid driver license issued by the state of residence.

   e. Pass a certification examination testing the applicant's knowledge, skills and abilities as

an instructor.

f. Attach a certified current 60 month motor vehicle record to the application.

g. If the applicant is currently serving as an active law enforcement officer where any portion of their duties includes the authority to issue citations, the applicant may submit a completed application only if the applicant has obtained a waiver from the presiding judge of the superior court in the county where the applicant is instructing, allowing the officer to serve as an instructor.

(1) The applicant shall use the application for waiver form provided by the AOC and shall complete the following information on the form:

(a) Description of the officer's position and duties and if the officer's position includes the authority to issue citations, the number of citations the officer issued in the past twelve months;
(b) The jurisdiction where the officer intends to serve as a defensive driving instructor and whether that conflicts with the jurisdiction where the applicant serves as a law enforcement officer;
(c) An acknowledgement by the officer that the officer, if certified as an instructor, shall not refer to the officer's employment as a law enforcement officer when teaching a defensive driving class; and
(d) An acknowledgement by the officer that if the officer's responsibilities change such that the officer is routinely issuing citations the officer will notify the presiding judge within ten days.

(2) The presiding judge will consider all of the factors listed in subsection (E)(2)(g)(1) when considering the request for waiver and may grant or deny the request.

3. and 4. [no changes]

F. Role and Responsibilities of Certificate Holders. In addition to the requirements of ACJA § 7-201(F), each school shall:

1. through 4. [no changes]

5. Designate a principal who holds contracting authority for the school, with whom division staff can immediately make contact concerning any process or procedure of the school or court operation. The principal shall:

a. through j. [no changes]
k. Provide the total school fee to attend the school's course in any and all information or materials provided to students, including the school's website. This total fee must be inclusive of all fees and costs assessed and retained by the school for the student to

attend and complete the school's course. This total fee must be provided to the student prior to the student beginning the registration process and the school shall not require the student to complete registration steps before providing the total school fee. The school shall provide the total school fee information in a conspicuous area on the first page of the school's Arizona web site ~~or~~ and on published materials in a manner that is readily noticeable to the public and that is in accordance with the format specified by the AOC for all schools. A school shall inform the student that it will report the student's completion to the court having jurisdiction for no additional charge.

l. A defensive driving school shall post on the opening page or opening Arizona page of their internet website the following information:

(1) The total ~~cost to attend defensive driving for diversion~~ fees and charges in the format specified by the AOC, which shall include the following information:

~~(2)~~ (a) The school's total fee to attend reflecting all fees the school ~~may charge~~ charges for the student to attend and complete the course and processing of the completion to the court;

(b) The state fee;

(c) The state surcharge;

(d) A link to an additional webpage that identifies the court diversion fee for the court where the student received the citation or the specific diversion fee for each court;

(e) That the total cost for the student to attend the school is the total of the school fee, state fee, state surcharge and the court diversion fee;

~~(3) The court diversion fee;~~

~~(4) The State surcharge;~~

~~(5) The State fee;~~

(~~6~~2)The eligibility requirements to attend a defensive driving school;

(~~7~~3)The instruction that a student must complete the course 7 days prior to their arraignment date;

(~~8~~4)The violations eligible for defensive driving diversion or a link to the Supreme Court website listing eligible violations;

(~~9~~5)A list of the information required for course registration:

(a) Traffic citation;

(b) Government issued identification;

(c) Payment to be made prior to the start of class or program;

(~~10~~6)The class or program instructional times;

(~~11~~7)School refund policy; and

(~~12~~8)Link to the Supreme Court's website and toll-free telephone number to further assist the public.

m. Report the school fee up to two times each year, effective either on April 1st or October 1st , or on both dates. If a school charges a different fee, depending upon the municipality or the county in which the student was cited, the school shall report each fee, identifying the associated city or county. A school shall notify division staff by

September 1st for changes effective October 1st and by March 1st for changes effective April 1st regardless of whether the school changes the fee or retains the current fee, using the form provided by division staff. Any notice received from a school after the March 1st deadline will not take effect on April 1st but will be delayed until the next change date on October 1st. Any notice received from a school after the September 1st deadline will not take effect on October 1st but will be delayed until the next change date on April 1st.

n. If an ADM school, ensure the examination is included in the online course; and

o. In addition to the provisions contained in ACJA § 7-201(H)(6)(c), a certificate holder is subject to disciplinary action if the board finds the certificate holder has failed to cooperate with or supply information to any court or court staff by the time specified in any request.

6. through 31. [no changes]

32. Instructors. In addition to the requirements of ACJA § 7-201(F), an instructor may only teach defensive driving courses or contract to provide assistance under the auspices of a <u>certified</u> school.

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

1. Expiration Date. All school and instructor certificates shall expire at midnight, October 31st of odd numbered years.

2. Schools. Each school seeking renewal of certification shall:

   a. Pay the specified renewal fee in subsection (K)~~, calculated by division staff based on the total number of students completing a defensive driving course during the previous two state fiscal years~~;

   b. Pay any outstanding assessed ineligible completion processing fee;

   c. Provide division staff any changes in administrative, operational or financial procedures;

   d. Provide division staff any changes in curriculum content by electronic means only; and

   e. Provide division staff any changes in third party contracts.

3. Instructors. All instructors shall:

   a. Apply for renewal by submitting a certified motor vehicle record for the prior 24 months preceding the date the applicant files the renewal application with division staff.

~~b. Teach a minimum of eight classes in the 24 months of each renewal cycle. An instructor whose certificate expires less than one year from the effective date of certification shall teach on a pro-rated basis at the rate of at least one class for every two months the instructor has been certified. The employing or contracted school shall maintain records of classes taught for each employed or contracted instructor and shall provide the records on request of division staff or the board.~~

~~c~~b. Continuing education. During each renewal cycle all instructors shall attend a total of twelve hours of continuing education, six in each calendar year as required by the continuing education policies in subsection (L).

~~d~~c. Pass the examination for certification required pursuant to subsection (E)(2)(e) to qualify for renewal of certification.

~~4. Restricted Certification.~~

~~a. In order for a school to cover their scheduled defensive driving courses in the event of an emergency where an instructor is not available to teach a course, an owner or principal of a school may apply for, and the board may grant a restricted certificate under the following conditions:~~

~~(1) The owner or principal shall apply for the restricted certificate on a form approved by the board;~~
~~(2) The owner or principal holds a valid certificate as an instructor and meets all renewal requirements, except the requirement for the number of classes taught; and~~
~~(3) The owner or principal has not had a certificate that has been revoked or suspended.~~

~~b. To remain eligible to renew a restricted certificate, owners and principals shall complete all renewal requirements each renewal cycle except the number of defensive driving courses taught pursuant to subsection (G)(3).~~

~~5~~4. Denial of Renewal. In addition to the requirements in ACJA § 7-201(G), the following requirements apply:

a. The board may refuse to renew the certificate of any instructor who fails to meet the standards of this section and ACJA § 7-201 on two or more successive classroom monitoring sessions, completed more than 30 days apart.

b. If an instructor's certification lapses or is denied due to failure to meet renewal requirements, the instructor is not eligible to apply for subsequent certification for six months.

H. and I. [no changes]

J. Codes of Conduct.

1. Schools. This code of conduct is adopted by the supreme court to apply to all schools certified by the Arizona Supreme Court, pursuant to A.R.S. § 28-3395. The purpose of this code of conduct is to establish minimum standards of performance for schools.

   a. Curriculum. A school shall exercise extreme care and diligence and ensure all materials used in the instruction of defensive driving courses, whether in a classroom or in an ADM format, are in the public domain or original and not copied without the appropriate written permission.

      (1) A school shall make all reasonable efforts to secure accurate and current information in its presentations in defensive driving courses.
      (2) A school shall not use any curriculum material or teaching methods not approved by the board.

   b. Ethics. A school shall not operate in a manner reflecting adversely on the judiciary, board, courts, division staff or other agencies involved in the administration of justice including law enforcement agencies and attorneys.

      (1) A school shall maintain the confidentiality of all defensive driving student records, only transmit confidential information by U.S. Post, facsimile, or a secure electronic file, and shall not disclose defensive driving database information to any third party. A school may disclose information only upon presentation of reasonable evidence the individual seeking the information is the same individual who is the subject of the record. A school shall refer all third party requests for information to division staff.
      (2) A school shall not perform nor permit its employees, representatives or third party contractors to perform judicial functions or functions for court staff. School employees, representative or third party contractors shall not volunteer assistance to court staff in their official duties.
      (3) In addition to the provisions of ACJA § 7-201(H)(6)(c), a school and its staff shall comply with all requests for communications or information from court staff.
      (4) A school shall not use the Arizona Supreme Court logo or any other court logo on any of the school materials or in any way imply that the Arizona Supreme Court or any other Arizona court recommends or prefers a particular certified school. A certified school may provide information to the public that the school is certified by the Arizona Supreme Court, utilizing only the name associated with the active and valid certification of the school.

   c. Classrooms. A school shall maintain the appropriate decorum in the classroom to promote an atmosphere of learning for students. A school shall:

(1) Direct the instructors to require students to be punctual and attentive;
(2) Direct the instructors to prevent or control disruptions by students interfering with the conduct of the defensive driving course or distressing other students;
(3) Direct the instructors to prohibit students from sleeping or engaging in other activities that are not a part of the school's approved defensive driving course during the classroom instruction;
(4) Direct the instructors to forbid the use of electronic devises or laptop computers by students causing inattention or detractions from the learning of the student of other students in the defensive driving course; and
(5) Not use a facility for a classroom presentation which may create distractions prior, during or after the presentation.

d. Compliance. A school 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.

e. Advertising. A school shall not permit any erroneous, deceptive, or misleading advertising by omission, material misrepresentation, dishonesty, or fraud. A school shall not represent attendance at the school is free or that the school is recommended or preferred by the Arizona Supreme Court or any other Arizona court. A school shall not permit advertising during the presentation of its approved course. A school shall not provide any endorsements, rewards, or incentives to a student in order to:

(1) Receive reduced costs to attend the school's course by responding to an advertisement or taking a survey provided by the advertiser or school;
(2) Waive any costs or fees to attend the course;
(3) Misrepresent the costs to attend the course; or
(4) Misrepresent other schools' course offerings.

2. [no changes]

K. Fee Schedule.

1. Initial School Certification Fees for Two Year Period. Fee

(Fee is per each course delivery method utilized by a school)
~~a. Application year 2011:~~

~~(1) Certification expiring more than one year after application date $ 3000.00~~

~~(2) Certification expiring less than one year after application date $ 1500.00~~

~~b~~a. Application year 2012:

~~(1)~~ Initial Certification ~~expiring more than one year after application date~~ $ 4000.00

~~(2) Certification expiring less than one year after application date~~ ~~$ 2000.00~~

~~c~~b. Application year 2013 and after:

~~(1)~~ Initial Certification ~~expiring more than one year after application date~~ $ 5000.00

~~(2) Certification expiring less than one year after application date~~ ~~$ 2500.00~~

2. Initial Instructor Certification Fees for Two Year Period.

~~a.~~ Initial Certification ~~expiring more than one year after application date~~ $ 50.00

~~b. Certification expiring less than one year after application date~~ ~~$ 25.00~~

3. Examination Fees for Individuals.

a. Applicants for certification examination $ 50.00

b. Re-examinations $ 50.00

(For any applicant who did not pass the examination on the first attempt. The $50.00 fee applies to each re-examination.)

c. Re-registration for examination $ 50.00

(For any applicant who registers for an examination date and fails to appear at the designated site on the scheduled date and time.)

4. Renewal Certification Fees for Two Year Period.

a. School renewal

~~(1) Renewal year 2011:~~

~~Renewal fee for all schools~~ ~~$ 500.00~~

(~~2~~1) Renewal year 2013:

Renewal fee for all schools $ 750.00

(~~3~~2) Renewal year 2015 and after:

Renewal fee for all schools	$ 1000.00
b. Instructor renewal	$ 50.00
c. Late renewal fees	
(1) School	$ 50.00
(2) Instructor	$ 50.00
d. Delinquent continuing education	$ 50.00

5. Miscellaneous Fees.

a. Replacement of certificate or name change	$ 25.00
b. Public record request per page copy	$ 00.50
c. Certificate of correctness of copy of record	$ 18.00
d. Reinstatement application	~~$ 100.00~~ $ 1000.00
(Application for reinstatement to certification after suspension or revocation of certification.)	
e. Ineligible student completion processing fee (per occurrence)	$ 20.00
f. Implementation of an additional ~~modality~~ delivery method application fee for a currently certified school	$ 2000.00

L. [no changes]

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2012	_X_ Formal Action/Request __ Information Only __ Other	ACJA 6-202.01: Adult Intensive Probation Evidence-Based Practices

FROM:

Kathy Waters, Division Director, Adult Probation Services Division

DISCUSSION:

Proposed revision will:
1) Add supervision contact levels for adult probation departments utilizing the waiver (A.R.S.13-919).
2) Add criteria for the AOC to consider in granting a waiver request.
3) Eliminate redundancy and consolidate sub sections, which had been repeated through the code section.

Revised code section was presented to the Committee on Probation on October 5, 2012, and the Committee on Superior Court on November 2, 2012. Both committees voted to approve the code section as written.

RECOMMENDED COUNCIL ACTION:

Approve as written.

Comments and Responses to ACJA Section 6-202.01: Adult Intensive Probation Evidence-Based Practices

PARAGRAPH	COMMENT	RESPONSE
Section L. 2. o. Program Operations	The intensive probation officer shall then address the remaining treatment or counseling areas in descending order. Is this descending order per the assessment score? Or, the next area that the defendant is experiencing problems in?	This is not new verbiage and has been in the Evidence-Based Practices Adult Probation code sections. Probationer Officers should use the results of assessments and direct knowledge from supervising the offenders and contacting collateral sources to determine the appropriate order or priority of treatment, counseling, education, and other ancillary services and interventions.
Section N. 2. Minimum Supervision Requirements	The probation department shall establish and document minimum intensive supervision requirements for intensive probationers incarcerated in jail. Each probation department shall provide, in writing to each intensive probation officer, the minimum intensive supervision requirements established for intensive probationers incarcerated in jail and furnish training on adherence to those requirements. Code has not required contacts with defendants in custody unless they were on work furlough. Is this talking about defendants serving flat time? Or work furlough?	This is not new verbiage and has been in the ACJA IPS sub-section. Departments are to establish and document minimum supervision requirements for all incarcerated offenders (even those serving flat time) on Intensive probation. The Adult Probation Services Division recommends, at the bare minimum, that department policies require one face-to-face contact with the probationer while in custody for the purposes of completing a Review and Acknowledgement of Conditions of Probation and for release planning (e.g., appropriate residence upon release, when, where, and to whom to report, etc).

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 2: Adult Services
Section 6-202.01: Adult Intensive Probation Evidence-Based Practices

Sections A though K – No changes.

L~~M~~. Program Operations.

1. Each probation department shall develop:

    a. Policies and procedures that aim to reduce offender risk and the likelihood of future criminal behavior that are consistent with the principles of evidence-based practices.

    b. Policies and procedures which require probation officers providing intensive supervision to use the results of the standardized assessment, as well as any other relevant information, when developing a case plan.

    c. Policies and procedures which require that once every 180 days the supervising intensive probation officer administer the standardized reassessment and develop a new case plan.

    d. Policies and procedures that require probation officers to utilize graduated responses of consequences and incentives to address violation behavior and promote positive behavioral change.

    e. Policies and procedures which require supervising intensive probation officers to monitor intensive probationer compliance, behavioral changes and level of risk and request the court modify an intensive probationer's level of supervision when behavior and compliance with conditions of intensive probation have been achieved. Documentation regarding the compliance factors and justification for a requested level change shall be maintained in the intensive probationer's case record. A.R.S. § 13-917(A) provides:

        > The adult probation officer shall periodically examine the needs of each person granted intensive probation and the risks of modifying the level of supervision of the person. The court may at any time modify the level of supervision of a person granted intensive probation, or may transfer the person to supervised probation or terminate the period of intensive probation pursuant to A.R.S. § 13-901, subsection E.

    f. Policies and procedures regarding the alcohol and drug testing of persons on intensive probation. The procedure shall address the methods used to select intensive probationers for testing, the frequency of testing, and the type of test to be administered.

g. Policies and procedures by which accurate and timely records of the completion of community restitution hours are maintained for each intensive probationer. Credit toward court -ordered community restitution requirements are awarded on the basis of actual hours completed unless authorized by the court.

h. Protocols for working with the office of the clerk of the court to establish a process by which supervising intensive probation officers are provided with accurate and timely information concerning collections.

i. Policies and procedures to ensure the collection of monies owed as a condition of intensive probation. Each probation department and intensive probation team shall immediately address any arrearage. Each probation department and intensive probation team shall also encourage the intensive probationer's payment of other assessments, such as child support or traffic fines, ordered by any court.

j. A written policy concerning the monitoring of intensive probationers' compliance with court-ordered or disclosed prescription medications for mental health or public health concerns. This policy shall include protocols to ensure routine and timely communication between the supervising intensive probation officer and physician regarding the intensive probationer's compliance with dosage requirements.

k. Policies and procedures to ensure the accurate and timely recording of information on persons placed on intensive probation in the ACJIS maintained by the Arizona department of public safety. Members of intensive probation teams shall respond to each arrest notification received through ACJIS or through any law enforcement officer.

l. Supervision guidelines that are directed toward achieving desired outcomes that include, but are not limited to the reduction of the offender recidivism and criminogenic factors and will ensure that the majority of intensive probation supervision resources are dedicated to high risk probationers in order to successfully complete their term of probation and promote positive behavioral changes. Supervision guidelines shall include the following considerations:

(1) Supervision is tailored to the risks, needs and strengths presented by the individual probationer as determined by the standardized assessment;
(2) Supervision monitoring and intervention strategies are to involve no greater deprivations of liberty or property than are reasonably necessary to address sentencing purposes. Supervision programs, surveillance, and strategies that are utilized shall be the least intrusive means necessary to promote public safety and supervision goals;
(3) Initial and subsequent supervision planning shall develop specific goal-directed objectives to be accomplished by the probationer during the term of supervision and the strategies that the officer will use to monitor compliance and promote the accomplishment of those objectives. Supervision contacts shall be integral to implementing the overall supervision strategies, have a purpose that is directly related to case objectives and the probationer's level and type of risk;

(4) High risk cases require the concurrent implementation of multiple intervention strategies that apply the skills from a variety of disciplines to address the level and type of risk presented by the individual probationer, build on a probationer's strengths, and provide probationers with incentives to change;

(5) Document changes in a probationer's circumstances throughout the period of probation and actively engage in assessing the impact of any changes on the level and type of supervision. Officers shall independently assess a probationer's circumstances through field and collateral contacts at a level proportional to the issues in the individual case;

(6) Responses to noncompliance shall be timely, realistic and escalating; and shall include elements designed to both control and correct noncompliance; and

(7) The intensity and frequency of supervision activities shall be reduced over time for stable, compliant probationers who are meeting their supervision objectives.

2. Each intensive probation officer or team shall:

a. Administer the standardized assessment within 30 days of a probationer's placement on probation or initial release from custody if an assessment was not completed prior to sentencing;

b. Re-evaluate the adequacy and applicability of the court-ordered conditions of probation as part of the ongoing assessment and planning process and, if applicable, petition the court for modifications;

c. Utilize the results of the standardized assessment to establish a level of supervision and finalize a case plan within 30 days of a probationer's placement on intensive probation or initial release from custody. The officer shall ensure the case plan includes signatures of the probation officer, surveillance officer and probationer and objectives in the case plan are measurable;

d. Develop and implement supervision strategies that are matched by standardized assessment results and criminogenic factors with the probationer's risks, needs and strengths that promote supervision goals and to provide effective supervision that is individualized, proportional and purposeful. Surveillance and other interventions shall be proportionately matched to emerging or decreasing risk factors;

e. Assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use shall be accepted in lieu of alcohol or drug testing ~~Target interventions to promote public safety~~;

f. Evaluate the case plan and supervision strategies on an ongoing basis;

g. Use communication techniques that engage the probationer in their own case plan, motivation and goals ~~Administer the standardized reassessment every 180 days. The results of the standardized reassessment, along with the intensive probationer's~~

~~compliance with the conditions of intensive probation and any other relevant factors, shall be used to develop a new case plan~~;

h. Administer the standardized reassessment every 180 days. The results of the standardized reassessment, along with the intensive probationer's compliance with the conditions of intensive probation and any other relevant factors, shall be used to develop a new case plan ~~Review the assessment and the previous case plan during the development of a new case plan to determine if a change in strategies is required to promote behavioral changes. Strategies shall be re-evaluated if there has been regress or no change in behavior~~;

i. Review the assessment and the previous case plan during the development of a new case plan to determine if a change in strategies is required to promote behavioral changes. Strategies shall be re-evaluated if there has been regress or no change in behavior ~~Monitor intensive probationer behavior and compliance with the conditions of intensive probation and, when warranted, petition the court to increase or decrease the intensive probationer's level of supervision~~;

j. Provide probationers with feedback on the results of an assessment or reassessment and progress with the established behavioral goals and conditions of probation and provide positive reinforcement to encourage behavioral changes ~~Respond to emerging risk indicators with graduated increases in the level of supervision, pursuant to probation departmental policy~~;

k. Monitor intensive probationer behavior and compliance with the conditions of intensive probation and, when warranted, petition the court to increase or decrease the intensive probationer's level of supervision or, for waivered probation officers, supervision contact level ~~Provide probationers with feedback on the results of an assessment or reassessment and progress with the established behavioral goals and conditions of probation and provide positive reinforcement to encourage behavioral changes~~;

l. Monitor, record and enforce the community restitution requirements ordered by the court ~~Provide probationers with information and referrals to social services that may promote the individual's ability to function under decreasing levels of supervision~~;

m. Respond to emerging risk indicators by targeting interventions to promote public safety and utilizing graduated increases in the level of supervision, pursuant to probation departmental policy ~~Petition the court to reduce the level of supervision for a probationer that assesses as low risk on the standardized assessment or standardized reassessment. The intensive probation team shall document in the case record the circumstances for continuing probationers that assess as low risk on the standardized risk needs instrument on intensive probation supervision.~~;

n. Respond to positive pro-social behavior pursuant to established departmental incentives policies ~~Petition the court to modify the intensive probationer's supervision to standard probation or terminate the period of probation when the intensive~~

~~probation team determines that intensive probation is no longer needed. If the court grants the modification from intensive supervision to standard supervision, the probation department shall transfer the case to a standard probation officer~~;

o. Provide a written directive to the intensive probationer referring the intensive probationer to an appropriate service provider within 60 days of sentencing, initial release from custody as a condition of intensive probation, or when a need for treatment, education or counseling is identified. If more than one area of treatment or counseling is identified, the intensive probation officer shall prioritize the needs and address the one with highest priority within the prescribed time frame. The intensive probation officer shall then address the remaining treatment or counseling areas in descending order. Additional referrals to social services that may promote the individual's ability to function under decreasing levels of supervision should be made as necessary; ~~Require each direct probationer under the intensive probation team's supervision to submit a schedule of activities for approval. Intensive probationers who are incarcerated or participating in residential treatment are exempt from this requirement. The intensive probation team shall monitor and enforce the approved schedule; and~~

p. Petition the court to reduce the level of supervision for a probationer that assesses as low risk on the standardized assessment or standardized reassessment. The intensive probation team shall document in the case record the circumstances for continuing probationers that assess as low risk on the standardized risk needs instrument on intensive probation supervision; ~~Make a documented effort to locate an intensive probationer. If the intensive probationer is not located within 72 hours, the intensive probation team shall file a petition to revoke probation no later than the next business day and request that the court issue a warrant. The probation department's efforts to locate the intensive probationer shall continue until the intensive probationer is apprehended.~~

q. Petition the court to modify the intensive probationer's supervision to standard probation or terminate the period of probation when the intensive probation team determines that intensive probation is no longer needed. If the court grants the modification from intensive supervision to standard supervision, the probation department shall transfer the case to a standard probation officer; ~~The probation officer shall seek a criminal restitution order upon the expiration of 90 days, pursuant to A.R.S. § 13-805(A)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1).~~

r. Require each direct probationer under the intensive probation team's supervision to submit a schedule of activities for approval. The intensive probation officer shall monitor and enforce approved schedules established pursuant to A.R.S. § 13-914(E)(4). For probationers that are meeting expected behavioral goals, scheduling requirements shall provide the probationer a graduated reduction in structured activities to promote a successful transition to reduced supervision. Scheduled activities shall provide opportunities for pro-social activities "as specifically allowed in each instance by the adult probation officer" (A.R.S. § 13-914(E)(4)). Intensive

probationers who are incarcerated or participating in residential treatment are exempt from this requirement. The intensive probation team shall monitor and enforce the approved schedule;

s. Conduct an investigation of arrest notification. Upon the receipt of an arrest notification, the intensive probation officer shall immediately contact the law enforcement officer or agencies involved to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The intensive probation officer shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident;

t. Make a documented effort to locate an intensive probationer. If the intensive probationer is not located within 72 hours, the intensive probation officer shall file a petition to revoke probation no later than the next business day and request that the court issue a warrant. The probation department's efforts to locate the intensive probationer shall continue until the intensive probationer is apprehended; and

u. The probation officer shall seek a criminal restitution order upon the expiration of 90 days, pursuant to A.R.S. § 13-805(A)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1).

3-9. **[No changes.]**

M~~N~~. Program Placement.

1. A person placed on intensive probation shall be supervised by the intensive probation team pursuant to the minimum supervision requirements established pursuant to A.R.S. § 13-916 (F)(2) ~~for supervision level I until such time as the standardized assessment and initial case plan have been completed and the probationer has demonstrated satisfactory progress meeting case plan objectives~~.

2. Upon the completion of the standardized assessment and initial case plan, the intensive probation team shall utilize the results of the standardized assessment, along with the probationer's compliance with the conditions of intensive probation and any other relevant factors, and recommend to the court placement on an appropriate supervision level.

3. A person continued on intensive probation as a result of a probation violation proceeding may be supervised at any supervision level as established by the standardized assessment or reassessment and other relevant case information. The intensive probation team shall utilize the results of the standardized assessment or reassessment, along with the probationer's compliance with previously imposed conditions of standard or intensive probation and any other relevant factors, and recommend to the court placement on an appropriate supervision level.

4. An intensive probationer may exit intensive probation at any supervision level.

N~~O~~. Minimum Supervision Requirements.

1. The following supervision requirements are established as minimum thresholds for intensive probationers being supervised in the community without waiver provisions. Each probation department may establish more rigorous intensive supervision requirements. Each chief probation officer shall ensure that all established minimum intensive supervision requirements are provided in writing to each intensive probation team, along with training on adherence to those requirements.

2. The probation department shall establish and document minimum intensive supervision requirements for intensive probationers incarcerated in jail. Each probation department shall provide, in writing to each intensive probation team, the minimum intensive supervision requirements established for intensive probationers incarcerated in jail and furnish training on adherence to those requirements.

~~3. The probation department shall establish supervision guidelines that are directed toward achieving desired outcomes that include, but are not limited to the reduction of the offender recidivism and criminogenic factors and will ensure that the majority of intensive probation supervision resources are dedicated to high risk probationers in order to successfully complete their term of probation and promote positive behavioral changes. Supervision guidelines shall include the following considerations:~~

   ~~a. Tailored to the risks, needs and strengths presented by the individual probationer as determined by the standardized assessment;~~

   ~~b. Supervision monitoring and intervention strategies are to involve no greater deprivations of liberty or property than are reasonably necessary to address sentencing purposes. Supervision programs, surveillance, and strategies that are utilized shall be the least intrusive means necessary to promote public safety and supervision goals;~~

   ~~c. Initial and subsequent supervision planning shall develop specific goal-directed objectives to be accomplished by the probationer during the term of supervision and the strategies that the officer will use to monitor compliance and promote the accomplishment of those objectives. Supervision contacts shall be integral to implementing the overall supervision strategies, have a purpose that is directly related to case objectives and the probationer's level and type of risk;~~

   ~~d. High risk cases require the concurrent implementation of multiple intervention strategies that apply the skills from a variety of disciplines to address the level and type of risk presented by the individual probationer, build on a probationer's strengths, and provide probationers with incentives to change;~~

   ~~e. Document changes in a probationer's circumstances throughout the period of probation and actively engage in assessing the impact of any changes on the level and type of supervision. Officers shall independently assess a probationer's circumstances~~

~~through field and collateral contacts at a level proportional to the issues in the individual case;~~

~~f. Responses to noncompliance shall be timely, realistic and escalating; and shall include elements designed to both control and correct noncompliance; and~~

~~g. The intensity and frequency of supervision activities shall be reduced over time for stable, compliant probationers who are meeting their supervision objectives.~~

3~~4~~. Supervision level I is reserved for probationers who assess as high risk on the standardized assessment or reassessment as well as newly sentenced probationers who assess as medium or low risk and shall include:

a. Visual contacts. The intensive probation team shall have a minimum of four visual contacts each week with each intensive probationer. Home contacts are required on a random and varied basis. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.

b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation team shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation team shall have face-to-face, telephonic or written contact with the intensive probationer's employer each week. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.

~~c. Investigation of arrest notification. The intensive probation team shall immediately contact the law enforcement officer or agency involved, upon receipt of an arrest notification, to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The intensive probation team shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident.~~

~~d. Schedule. The intensive probation team shall monitor and enforce approved schedules established pursuant to A.R.S. § 13-914(E)(4). For probationers that are meeting expected behavioral goals, scheduling requirements shall provide the probationer a graduated reduction in structured activities to promote a successful transition to reduced supervision. Scheduled activities shall provide opportunities for pro-social activities "as specifically allowed in each instance by the adult probation officer" (A.R.S. § 13-914(E)(4)).~~

~~e. Community restitution. The intensive probation team shall monitor, record and enforce the community restitution requirements ordered by the court.~~

~~f. Alcohol and drug testing. The intensive probation team shall assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use shall be accepted in lieu of alcohol or drug testing.~~

~~g. Treatment and counseling. The intensive probation team shall provide a written directive to the intensive probationer referring the intensive probationer to an appropriate service provider within 60 days of sentencing, initial release from custody as a condition of intensive probation, or when a need for treatment, education or counseling is identified. If more than one area of treatment or counseling is identified, the intensive probation team shall prioritize the needs and address the one with highest priority within the prescribed time frame. The intensive probation team shall then address the remaining treatment or counseling areas in descending order.~~

~~h. Development of case plans that target risk and need areas evidenced to be significant predictors of risk to re-offend.~~

~~i. The use of communication techniques that engage the probationer in their own case plan, motivation and goals.~~

~~j. Responses to offender behavior pursuant to established departmental policies on graduated responses of consequences and incentives.~~

~~k. Evaluation of ongoing supervision and strategies.~~

~~l. Responses to positive pro-social behavior pursuant to established departmental incentives policies.~~

~~m. The probation officer's recommendation for a reduction of supervision for eligible probationers pursuant to the results of the standardized risk assessment or standardized risk reassessment may be made to the court once it has been ascertained that a change in supervision level is warranted based upon standardized assessment and reassessment and progress with established behavioral goals.~~

4~~5~~. Supervision level II is reserved for probationers who assess as high risk on the standardized assessment or reassessment and who have demonstrated positive behavioral change. A modification must be obtained from the court prior to placement on level II. Supervision level II shall include:

a. Visual contacts. The intensive probation team shall have a minimum of two visual contacts each week with each intensive probationer, with at least one occurring at the intensive probationer's residence. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.

b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation team shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation team shall have face-to-face, telephonic or written contact with the intensive probationer's employer every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.

c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable. ~~Investigation of arrest notification. Upon the receipt of an arrest notification, the intensive probation team shall immediately contact the law enforcement officer or agencies involved to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The intensive probation team shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident.~~

~~d. Schedule. The intensive probation team shall monitor and enforce approved schedules established pursuant to A.R.S. § 13-914(E)(4). For probationers that are meeting expected behavioral goals, scheduling requirements shall provide the probationer a graduated reduction in structured activities to promote a successful transition to reduced supervision. Scheduled activities shall provide opportunities for pro-social activities "as specifically allowed in each instance by the adult probation officer" (A.R.S. § 13-914(E)(4)).~~

~~e. Community restitution. The intensive probation team shall monitor, record and enforce the community restitution requirements ordered by the court.~~

~~f. Alcohol and drug testing. The intensive probation team shall assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use shall be accepted in lieu of alcohol or drug testing.~~

~~g. Treatment and counseling. The intensive probation team shall provide a written directive to the intensive probationer referring the intensive probationer to an appropriate service provider within 60 days of sentencing, initial release from custody as a condition of intensive probation, or when a need for treatment, education or counseling is identified. If more than one area of treatment or counseling is identified, the intensive probation team shall prioritize the needs and address the one with highest priority within the prescribed time frame. The intensive probation team shall then address the remaining treatment or counseling areas in descending order.~~

~~h. Collateral Contacts: The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable.~~

~~i. Development of case plans that target risk and need areas evidenced to be significant predictors of risk to re-offend.~~

~~j. The use of communication techniques that engage the probationer in their own case plan, motivation and goals.~~

~~k. Responses to offender behavior pursuant to established departmental policies on graduated responses of consequences and incentives.~~

~~l. Responses to positive pro-social behavior pursuant to established departmental incentives policies.~~

~~m. Evaluation of ongoing supervision and strategies.~~

5~~6~~. Supervision level III is designed for transitioning high risk probationers to standard probation supervision and as a step down from level I for probationers assessed as medium or low risk. A modification must be obtained from the court prior to placement on level III. Supervision level III shall include:

a. Visual contacts. The intensive probation team shall have a minimum of one visual contact each week with each intensive probationer, with at least one occurring at the intensive probationer's residence every other week. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.

b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation team shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation team shall have face-to-face, telephonic or written contact with the intensive probationer's employer every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.

c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable. ~~Investigation of arrest notification. Upon the receipt of an arrest notification, the intensive probation team shall immediately contact the law enforcement officer or agencies involved to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The intensive probation team shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident.~~

~~d. Schedule. The intensive probation team shall monitor and enforce approved schedules established pursuant to A.R.S. § 13-914(E)(4). For probationers that are meeting expected behavioral goals, scheduling requirements shall provide the~~

~~probationer a graduated reduction in structured activities to promote a successful transition to reduced supervision. Scheduled activities shall provide opportunities for pro-social activities "as specifically allowed in each instance by the adult probation officer" (A.R.S. § 13-914(E)(4)).~~

~~e. Community restitution. The intensive probation team shall monitor, record and enforce the community restitution requirements ordered by the court.~~

~~f. Alcohol and drug testing. The intensive probation team shall assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use shall be accepted in lieu of alcohol or drug testing.~~

~~g. Treatment and counseling. The intensive probation team shall provide a written directive to the intensive probationer referring the intensive probationer to an appropriate service provider within 60 days of sentencing, initial release from custody as a condition of intensive probation, or when a need for treatment, education or counseling is identified. If more than one area of treatment or counseling is identified, the intensive probation team shall prioritize the needs and address the one with highest priority within the prescribed time frame. The intensive probation team shall then address the remaining treatment or counseling areas in descending order.~~

~~h. Collateral Contacts: The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable.~~

~~i. Development of case plans that target risk and need areas evidenced to be significant predictors of risk to re-offend.~~

~~j. The use of communication techniques that engage the probationer in their own case plan, motivation and goals.~~

~~k. Responses to offender behavior pursuant to established departmental policies on graduated responses of consequences and incentives.~~

~~l. Responses to positive pro-social behavior pursuant to established departmental incentives policies.~~

~~m. Evaluation of ongoing supervision and strategies.~~

6~~7~~. Supervision level IV is reserved for probationers who assesses as medium or low risk on the standardized assessment or reassessment and is designed to be a transition between intensive and standard probation. The supervising probation officer may petition the court to reduce the level of supervision for a probationer that assesses as low risk on the standardized assessment or standardized reassessment. The case record shall document the circumstances for continuing probationers that assess as low risk on the standardized risk needs instrument on intensive probation supervision. A modification must be

obtained from the court prior to placement on level IV. Supervision level IV shall include:

a. Visual contacts. The intensive probation team shall have a minimum of one visual contact every two weeks with each intensive probationer, occurring at the intensive probationer's residence. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.

b. Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation team shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation team shall have face-to-face, telephonic or written contact with the intensive probationer's employer once every four weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.

c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 4 weeks, if applicable~~. Investigation of arrest notification. Upon the receipt of an arrest notification, the intensive probation team shall immediately contact the law enforcement officer or agencies involved to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The intensive probation team shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident~~.

~~d. Schedule. The intensive probation team shall monitor and enforce approved schedules established pursuant to A.R.S. § 13-914(E)(4). For probationers that are meeting expected behavioral goals, scheduling requirements shall provide the probationer a graduated reduction in structured activities to promote a successful transition to reduced supervision. Scheduled activities shall provide opportunities for pro-social activities "as specifically allowed in each instance by the adult probation officer" (A.R.S. § 13-914(E)(4)).~~

~~e. Community restitution. The intensive probation team shall monitor, record and enforce the community restitution requirements ordered by the court.~~

~~f. Alcohol and drug testing. The intensive probation team shall assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use shall be accepted in lieu of alcohol or drug testing.~~

~~g. Treatment and counseling. The intensive probation team shall provide a written directive to the intensive probationer referring the intensive probationer to an~~

~~appropriate service provider within 60 days of sentencing, initial release from custody as a condition of intensive probation, or when a need for treatment, education or counseling is identified. If more than one area of treatment or counseling is identified, the intensive probation team shall prioritize the needs and address the one with highest priority within the prescribed time frame. The intensive probation team shall then address the remaining treatment or counseling areas in descending order.~~

~~h. Collateral Contacts: The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 4 weeks, if applicable.~~

~~i. Development of case plans that target risk and needs areas evidenced to be significant predictors of risk to re-offend.~~

~~j. The use of communication techniques that engage the probationer in their own case plan, motivation and goals.~~

~~k. Responses to offender behavior pursuant to established departmental policies on graduated responses of consequences and incentives.~~

~~l. Responses to positive pro-social behavior pursuant to established departmental incentives policies.~~

~~m. Evaluation of ongoing supervision and strategies.~~

7~~8~~. Supervision level V is reserved for intensive probationers participating in residential treatment. On release from residential treatment, the intensive probation team shall utilize the results of the standardized assessment or reassessment, along with the intensive probationer's compliance with the conditions of intensive probation, discharge plan supported by and involving the treatment provider, intensive probation team and intensive probationer, and any other relevant factors to ~~place the intensive probationer in one of various~~ recommend to the court placement on an appropriate supervision level~~s~~. Supervision level V shall include:

a. Visual contacts. The intensive probation team shall have a minimum of one visual contact every 30 days with each intensive probationer. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled.

b. Treatment provider contacts. The intensive probation team shall have a minimum of one face-to-face, telephonic or written contact every 30 days with the intensive probationer's treatment provider.

c. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 30 days, if applicable. ~~Investigation of arrest notification. The intensive probation team shall immediately contact the law enforcement officer or agency involved, upon receipt of an arrest notification, to ascertain the nature and circumstances surrounding the contact and~~

~~obtain a copy of any corresponding incident report or citation. The intensive probation team shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident.~~

d. Community restitution. Intensive probationers participating in residential treatment are exempt from community restitution requirements.

~~e. Alcohol and drug testing. The intensive probation team shall assess each intensive probationer's need for monitoring of alcohol and drug use and determine the frequency of testing. The testing shall be random and occur at intervals documented in the case record. Signed admissions of alcohol or drug use shall be accepted in lieu of alcohol or drug testing.~~

~~f. Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 30 days, if applicable.~~

~~g. Development of case plans that target risk and needs areas evidenced to be significant predictors of risk to re-offend.~~

~~h. The use of communication techniques that engage the probationer in their own case plan, motivation and goals.~~

~~i. Responses to offender behavior pursuant to established departmental policies on graduated responses of consequences and incentives.~~

~~j. Responses to positive pro-social behavior pursuant to established departmental incentives policies.~~

~~k. Evaluation of ongoing supervision and strategies.~~

O~~L~~. Waiver Provisions.

1. A.R.S. § 13-919 provides:

> The requirements of § 13-916, subsection A, subsection B and subsection F, paragraph 2 may be waived for a county if the case load of adult probation officers supervising persons on intensive probation is not more than fifteen persons and the program requires visual contact with each probationer at least one time a week.

2. The presiding judge shall file a waiver request pursuant to A.R.S. §§ 13-916 and 13-919 with the AOC on a form prescribed by the administrative director. The administrative director shall consider the following when determineing whether to grant the waiver~~.~~ :

   a. The number of offenders on intensive probation supervision in the requesting county;

b. The geographical make up of the requesting county and the communities that would be served under the waiver; and

c. The impact to the program and the implementation of evidence-based supervision by utilizing one-person teams.

3. Waiver requests shall be renewed annually if the participating court expects to maintain caseloads of no more than fifteen persons on intensive probation supervision caseloads.

4. The following supervision requirements are established as minimum thresholds for intensive probationers being supervised in the community. Each probation department may establish more rigorous intensive supervision requirements. Each chief probation officer shall ensure that all established minimum intensive supervision requirements are provided in writing to each intensive probation officer, along with training on adherence to those requirements. ~~Minimum supervision requirements under the waiver provision shall remain in effect throughout the period of intensive probation supervision and shall include:~~

   ~~a. Visual contact standards of one visual contact at least one time per week per probationer;~~

   ~~b. Pursuant to A.R.S. § 13-914(E)(6), "…For good cause, the court may reduce the number of community restitution hours performed to not less than twenty hours each month" and,~~

   ~~c. All requirements identified in subsections O (1-3) and O(6)(a-m) ACJA 6-202.01.~~

5. The probation department shall establish and document minimum intensive supervision requirements for intensive probationers incarcerated in jail. Each probation department shall provide, in writing to each intensive probation officer, the minimum intensive supervision requirements established for intensive probationers incarcerated in jail and furnish training on adherence to those requirements.

6. A person placed on intensive probation and assigned to a waivered officer shall be supervised by the intensive probation officer at supervision Contact Level 2 until the completion of the standardized assessment and initial case plan. The intensive probation officer shall utilize the results of the standardized assessment, along with the probationer's compliance with the conditions of intensive probation and any other relevant factors, and recommend to the court placement on an appropriate supervision contact level. Pursuant to A.R.S. § 13-917, if reductions or increases in supervision level are warranted, such reductions or increases shall be made by the court upon recommendation of the probation officer, as further described in L(8)(k).

   a. Contact Level 2 (CL2) shall be recommended for probationers assessing as high risk on the standardized assessment or reassessment. Minimum contact standards shall include:

(1) Visual contacts: a minimum of two per week with the probationer, with at least one occurring in the probationer's residence. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.
(2) Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation officer shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation officer shall have face-to-face, telephonic or written contact with the intensive probationer's employer every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.
(3) Collateral contacts: The intensive probation officer shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable.

b. Contact Level 3 (CL3) may be recommended for probationers who have demonstrated positive behavioral change while under supervision contact level 2. Minimum contact standards shall include:

(1) Visual contacts: a minimum of one visual contact per week, with at least one contact occurring in the probationer's residence every other week. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.
(2) Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation officer shall notify the intensive probationer's employer of the intensive probationer's probation status and employment verification requirements. The intensive probation officer shall have face-to-face, telephonic or written contact with the intensive probationer's employer every two weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.
(3) Collateral contacts: The intensive probation officer shall have a minimum of one collateral contact regarding each intensive probationer every two weeks, if applicable.

c. Contact Level 4 (CL4) may be recommended for probationers assessing as medium or low risk on the standardized assessment or reassessment and who have demonstrated positive behavioral change while under supervision contact level 3. Intensive probation officers shall not recommend supervision contact level 4 for probationers who assess as high risk. Minimum contact standards shall include:

(1) Visual contacts: a minimum of one visual contact every two weeks, occurring in the probationer's residence. Visual contacts shall be varied, scheduled and unscheduled, and include days, nights, weekends and holidays.
(2) Employment. Within ten days of placement on intensive probation or date of hire, the intensive probation officer shall notify the intensive probationer's employer of the intensive probationer's probation status and employment

verification requirements. The intensive probation officer shall have face-to-face, telephonic or written contact with the intensive probationer's employer every four weeks. The intensive probationer, if unemployed and eligible to work in the state of Arizona, shall each weekday, unless otherwise directed, provide the intensive probation team with verification of job search activities.

(3) Collateral contacts: The intensive probation officer shall have a minimum of one collateral contact regarding each intensive probationer every four weeks, if applicable.

d. Contact Level 5 (CL5) intensive probationers participating in residential treatment on release from residential treatment, the intensive probation officer shall utilize the results of the standardized assessment or reassessment, along with the intensive probationer's compliance with the conditions of intensive probation, discharge plan supported by and involving the treatment provider, intensive probation officer and intensive probationer, and any other relevant factors to recommend to the court placement on an appropriate supervision contact level. Minimum contact standards shall include:

(1) Visual contacts. The intensive probation officer shall have a minimum of one visual contact every 30 days with each intensive probationer. Mandatory visual contacts may be made by other probation or surveillance officers when authorized by the chief probation officer. Visual contacts shall be varied, scheduled and unscheduled.

(2) Treatment provider contacts. The intensive probation officer shall have a minimum of one face-to-face, telephonic or written contact every 30 days with the intensive probationer's treatment provider.

(3) Collateral contacts. The intensive probation team shall have a minimum of one collateral contact regarding each intensive probationer every 30 days, if applicable.

Section P – No changes

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2012	_X_ Formal Action/Request __ Information Only __ Other	ACJA proposed changes to § 7-204 (Private Process Servers)

FROM:
Anne Hunter, Manager, Certification and Licensing Division, Administrative Office of the Courts

DISCUSSION:
A.R.S. § 11-445(I), Rules 4(d) and (e), Rules of Civil Procedure and the Arizona Code of Judicial Administration § 7-204: Private Process Server, contain provisions regulating private process servers, specify that a private process server is an "officer of the court," and authorize process servers to serve process anywhere in the state.

A rule (R-12-0021) was recently adopted to amend Rules 4(d) and (e) to, among other things, strike the provisions regarding the "registration" requirements and to place those requirements in ACJA § 7-204. Rules 4(d) and (e) were initially adopted by the Supreme Court in 1991; ACJA § 7-204 in 2003.

The proposed amendments to ACJA § 7-204 incorporate best practices in the regulatory arena, including residency requirements, factors to consider when reviewing an application for certification, and disciplinary sanctions. Many of the new provisions in § 7-204 are modeled after ACJA § 7-201 which applies to the regulation of a number of other professions under the authority of the Supreme Court.

In conjunction with the proposed changes, staff has worked closely with the Clerks of the Superior Court and the private process servers to implement needed improvements to the identification cards issued to certified private process servers. The current "wallet sized" identification cards are being replaced with cards that are professional in appearance/style and that a private process server can wear and display when serving process.

Amendments to ACJA § 7-204(D)(4)(b)(2) and (J)(6)(c) address the new process for production of the identification cards and identification of the process server.

The Superior Court is responsible for the administration of the Private Process Server Program, however the provisions in ACJA § 7-204 have impact to the limited jurisdiction courts as well. For example, the existing provision in ACJA § 7-204, subsection J(4)(i) regarding the protocol for service of process in a court building was initially suggested by a limited jurisdiction court judge. Therefore, the proposed amendments to ACJA § 7-204 have been presented to the Limited Jurisdiction Court Committee and the Committee on Superior Court, as well as being circulated for public comment. The Committee on Superior Court voted to recommend that the Arizona Judicial Council adopt the code section proposals as written. For recommendations voted on by the Limited Jurisdiction Court Committee, see the attached table. The table also contains comments received during the public comment period and the manner in which they were addressed.

RECOMMENDED COUNCIL ACTION:
Council may vote to adopt or not adopt the proposed changes to ACJA § 7-204.

PARAGRAPH	COMMENT	RESPONSE
(A) "Private Process Server" and (B) (E)(4) (G)(1)(d)	Support for: • the use of the term "certified" as opposed to "registered," • the elimination of provisional certification, and • additional language to close a loophole in the continuing education requirements. (comment from the Arizona Association of Certified Process Servers)	None required.
(E)(2)(c)(6)	Opposition to eliminating personal references as a certification requirement. (comment from the Arizona Association of Certified Process Servers)	Change not incorporated. The requirement for references is not a best practice and did not add any meaningful information to the certification process.
(E)(2)(c)(1)	Opposition to allowing non-Arizona residents to become certified in Arizona. (comment from the Arizona Association of Certified Process Servers)	Change not incorporated. Changes to the Rules of Civil Procedure 4(e) effective January 1, 2013, strike the requirement that an applicant be a resident of Arizona. Not being a resident of Arizona does not preclude the AOC from holding certificate holders responsible for code violations.
(E)(b)(4)	Opposition to the language regarding criteria a judge shall consider when reviewing the application for certification of an individual with a misdemeanor or felony conviction. The Limited Jurisdiction Court Committee voted to recommend that the Arizona Judicial Council not adopt the code section proposal as written – see code section proposal labeled "LJC approved."	Changes to the original proposal that were approved by the Limited Jurisdiction Court Committee are attached to this table for comparison purposes and are labeled "LJC approved." The original proposed changes to paragraph (E)(b)(4) regarding conviction of a felony or misdemeanor are consistent with A.R.S. 13-904(E) which states that a person whose civil rights have been restored may not be disqualified for

	(comment from the Arizona Association of Certified Process Servers and members of the Limited Jurisdiction Court Committee)	certification solely because of a prior conviction of a felony or misdemeanor unless the "offense has a reasonable relationship to the functions of the employment or occupation for which the license, permit or certificate is sought."
(L)(4)(l)(8)	Opposition to requiring documentation for continuing education activities of eight hours or more in one day. (comment from the Arizona Association of Certified Process Servers)	Changes not incorporated. AOC staff believe that it is reasonable to require applicants who attend more than eight hours of training in one day submit an agenda from the training.
N/A	Suggestion that the amendment include a requirement for 40 hours of pre-certification training. The Limited Jurisdiction Court Committee voted to recommend to the Arizona Judicial Council to accept the suggestion, however there has been no language drafted. The Committee on Superior Court voted to recommend the Arizona Judicial Council did not vote to adopt the suggestion for a pre-certification training requirement. (comment from the Arizona Association of Certified Process Servers)	Changes not incorporated. AOC staff believes adding this requirement addresses a non-issue, and that the certification examination is adequate to prepare individuals for serving process. Also, an additional requirement of pre-certification training would necessitate establishing monitoring responsibilities and associated costs.
N/A	Suggestion that the list of process servers maintained on the AOC website include all qualified process servers, and not just those certified to serve process in Arizona. (comment from the Independent Professional Process Servers of America, Inc.)	Changes not incorporated.

Paragraph (E)(b)(4) LJC approved change:

~~a~~b. The presiding judge may refuse to certify an applicant if one or more of the following is found:

(1) Material misrepresentation, omission, ~~or~~ fraud, dishonesty, or corruption on the part of the applicant in the application for, or attempt to obtain, certification, including the examination;
(2) A record of any act constituting material misrepresentation, omission, dishonesty, corruption, or fraud on the part of the applicant in business or financial matters;
(3) A record of conduct showing the applicant is incompetent or a source of injury and loss to the public;
~~(4) A record of repeated complaints by the public or the court;~~
~~(5)~~(4)A record of conviction by final judgment of a misdemeanor or felony,
(5~~6~~)A record of denial, revocation, suspension, or any disciplinary action ~~censure~~ of any professional or occupational license or certificate of the applicant by any federal, state, or local government. The judge shall consider whether the underlying conduct in any other disciplinary action is relevant to certification as a private process server;
(6) A record of a termination, suspension, probation, or any other disciplinary action regarding past employment if the underlying conduct is relevant to certification as a private process server;
(7) The applicant has been found civilly liable by final judgment in an action involving fraud, misrepresentation, material omission, misappropriation, theft, or conversion;
(8) The applicant is currently on probation or parole or named in an outstanding arrest warrant;
~~(9) The applicant has not submitted fingerprints pursuant to subsection E(2)(c)(4) and the presiding judge has not received and reviewed the criminal background analysis,~~ or
(10)The applicant has violated any Arizona law, Arizona Rules of Court, ~~and this code section~~ ACJA § 7-204, or court orders governing private process servers.
(11)The applicant has violated any decision, order, or rule issued by a professional regulatory entity;
(12) The applicant has violated any order of a court, judicial officer, or administrative tribunal;
(13) The applicant has made a false or misleading statement or verification in support of an application for a certificate filed by another person;
(14)The applicant has made a false or misleading oral or written statement to judicial officers, judicial staff or division staff;
(15)The applicant failed to disclose information on the certification application subsequently revealed through the background check; or
(16)The applicant failed to respond or furnish information to the presiding judge, clerk, or judicial staff 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.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 7: Administrative Office of the Courts
Chapter 2: Certification and Licensing Programs
Section 7-204: Private Process Server

A. Definitions. ~~In this code section the~~ The following definitions apply:

"Accredited" means placement on a list of nationally recognized authorizing agencies the United States Secretary of Education determines to be reliable authorities as to the quality of education or training provided by the institutions of higher education, and the higher education programs they sanction.

"Active" means a valid and existing certificate to practice as a certified process server.

~~"Administrative Director" means the director of the Administrative Office of the Courts, Arizona Supreme Court, or the director's designee.~~

~~"Administrative Office" means the Administrative Office of the Courts Arizona Supreme Court.~~

"Advisory letter" means written communication notifying a certificate holder the conduct, while not warranting discipline, may result in future disciplinary action if not modified or eliminated. An advisory letter is not a disciplinary action.

"Applicant" means a person who has submitted a completed application and all required application and fingerprint processing fees.

"Censure" means a written formal discipline sanction, finding a certificate holder has violated one or more provisions of the statutes, court rules, or this code section.

"Certificate holder" means any entity or individual granted and currently holding valid certification pursuant to statutes, court rules, and this code section.

"Certification" means a certificate issued by the presiding judge once an applicant meets all the requirements of a private process server, pursuant to statutes, court rules, and this code section.

"Clerk" means the elected clerk of the Arizona Superior Court in each county.

~~"Code Section" means the referenced provision of the Arizona Code of Judicial Administration.~~

"Complainant" means a person or organization that initially files a complaint regarding the conduct of a private process server. The complainant is not a party to the proceeding.

"Community college" means an accredited educational institution providing training in the arts,

sciences, and humanities beyond the twelfth grade of the public or private high school course of study or vocational education, including terminal courses of a technical and vocational nature and basic education courses.

"Consent agreement" means a written statement to resolve a certification or complaint matter, voluntarily signed by the applicant or certificate holder.

"~~Days" means the same as provided by Arizona Rules of Civil Procedure, that is: the computation of days is as follows: If " . . . less than 11 days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation . . . " and if ". . . 11 days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation."~~

"Director" means the administrative director of the courts, or the director's designee.

"Division director" means the director of the certification and licensing division of the Administrative Office of the Courts or the division director's designee.

"Division staff" means all members of the certification and licensing division of the Administrative Office of the Courts, including the division director.

"Disciplinary action" means either informal or formal proceedings against a certificate holder after a finding of probable cause the certificate holder has committed acts of misconduct or violations of statutes, court rules, or this code section.

"Dismissed with prejudice" means final disposition barring future action under this section on the same issue, claim or cause.

"Dismissed without prejudice" means final disposition with the right to bring future action under this section on the same issue, claim, or cause.

"Expired" means the certificate has lapsed on a specified date.

"Filing" or "filed" means a document has been received and date-stamped by the clerk.

"Formal statement of C~~c~~harges" means ~~a~~ the document setting forth specific acts of misconduct by a certified private process server of statutes, court rules, or this code section, including any amendments approved by the court, upon a determination of probable cause.

"Formal ~~D~~disciplinary ~~P~~proceedings" means the process initiated upon a determination of probable cause the alleged acts of misconduct or violations of the statutes, court rules, or this code section by a certified process server that, if true, would warrant a censure, consent agreement or other negotiated settlement, restrictions, probation, additional training, a cease and desist order, suspension, or revocation of certification pursuant to subsection (H). ~~filing of formal charges specifying misconduct by a certified private process server. Formal disciplinary~~

~~proceedings commence after a finding there is probable cause to believe a private process server has committed a violation of the administrative code, statutes or court rules pertaining to service of process that if true, would warrant a public sanction. The public sanction could include restrictions on the certificate, or suspension or revocation of the certificate.~~

"Government ~~E~~employee ~~P~~process ~~S~~server" means an individual who, in the normal scope of the individual's responsibilities as a government employee, serves process for the governmental agency that employs the individual.

"Inactive" means a certified private process server who voluntarily decides not to practice in the specified profession or occupation for a specified period of time and who is not the subject of any pending disciplinary action.

"Informal ~~D~~disciplinary ~~P~~proceedings" means the process initiated upon a determination of probable cause the alleged acts of misconduct or violations of the statutes, court rules, or this code section by a certificate holder that, if true, would warrant a letter of concern, pursuant to subsection (H). ~~resolution of a complaint prior to the filing of formal charges. An informal disciplinary proceeding may result in imposition of sanctions, but the sanction may not include restrictions on a certificate, suspension or revocation of a certificate.~~

"Injury" means harm to a client, customer, the public, judicial or legal system, or the profession or occupation resulting from a certificate holder's misconduct.

"Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

"Letter of concern" means a written informal discipline sanction finding a certificate holder has violated one or more provisions of the statutes, court rules, or this code section.

"Minimum competencies" means having the required skills for an adequate level of performance.

"Presiding ~~J~~judge" means the presiding judge of the Arizona Superior Court or the presiding judge's designee.

"Probable cause" means reasonable grounds for belief in the existence of facts concerning alleged acts of misconduct or violations by a certificate holder, warranting informal or formal discipline against the certificate holder.

"Probation" means a written formal discipline sanction finding a certificate holder has violated one or more provisions of the statutes, court rules, or this code section, but allowing the

certificate holder to practice as a process server under specified conditions for a set period of time.

"Private ~~P~~process ~~S~~server" means a person, ~~duly appointed or registered~~ certified pursuant to the requirements in A.R.S. § 11-445~~(H)~~(I), this code section, and any other applicable statute or rule. As defined by A.R.S. § 11-445~~(H)~~(I), a private process server:

> ~~. . .~~ [M]~~m~~ay serve all process, writs, orders, pleadings or papers required or permitted by law to be served before ~~prior to~~, during~~,~~ or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable, except writs or orders requiring the service officer to sell, deliver or take into the officer's custody persons or property, or as may otherwise be limited by rule established by the supreme court. A private process server is an officer of the court.

~~"Program coordinator" means the staff appointed by the director to administer the program.~~

~~"Provisional Certification" means a temporary certificate issued by the presiding judge which expires 120 days after the presiding judge grants it.~~

"Professional regulatory entity" means a government or private unit associated with and having authority over a group of qualified and practiced individuals in a profession or occupation.

"Revoked" or "revocation" means a written formal discipline sanction, finding a certificate holder has violated one or more provisions of the statutes, court rules, or this code section and the certificate to practice as a process server is rescinded. ~~the permanent invalidation or cancellation of a private process server's certificate.~~

"Sanction" means an explicit and official action resulting from an informal or formal disciplinary action finding a certificate holder has violated or failed to comply with one or more of the statutes, court rules, this code section, or court orders relevant to the certificate holder's profession or occupation.

"Section" means the referenced provision of Arizona Code of Judicial Administration § 7-204.

~~"Standard Certification" means a certificate issued by the presiding judge once an applicant meets all the requirements for certification of a private process server.~~

"Suspended" or "suspension" means a written formal discipline sanction finding a certificate holder has violated one or more provisions of the statutes, court rules, or this code section and the private process server's certificate is not revoked, but the certificate holder is not permitted to exercise the privileges of the certificate for a set period of time as the result of a final order of a disciplinary action.

"Valid" means a certificate issued by the presiding judge that is currently in effect and not expired, surrendered, suspended, or revoked.

"Voluntary surrender" means a certificate holder decides to discontinue practice as a process server and returns the certificate to the presiding judge for review and acceptance pursuant to subsection (E).

B. Applicability. This code section applies to the certification of ~~private~~ process servers pursuant to A.R.S. § 11-445~~(H)~~(I) and the Arizona Rules of Civil Procedure. This code ~~provision~~ section applies to the application, certification, and discipline of all private process servers in the State of Arizona. This code section governs private process server certification separately and without reference to Arizona Code of Judicial Administration § 7-201:~~,~~ General Provisions~~, of the Arizona Code of Judicial Administration~~. ~~For uniformity, consistency and ease of reading the term "certification" refers to either certification or registration~~.

C. Purpose. For eligibility to act as a private process server in Arizona, all persons shall obtain certification and comply with the requirements of A.R.S. § 11-445(~~H~~ I), the Arizona Rules of Civil Procedure, administrative orders, and ~~this administrative code section~~ this code section as adopted by the Arizona Supreme Court to govern private process servers. Certified private process servers may serve all process, writs, orders, pleadings, or papers required or permitted by law for service prior to, during, or independent of a court action, including all documents required or permitted for service by a sheriff or constable, except writs or orders requiring the service officer to sell, deliver, or take into custody persons or property, or as otherwise limited by this code section. Pursuant to Arizona Rules of Civil Procedure 4(e), a certified ". . . private process server . . ." is ". . . entitled to serve in such capacity for any court of the state anywhere within the State."

D. Administration.

1. Role and Responsibilities of the Supreme Court. Pursuant to A.R.S. § 11- 445(I) and Rule 4(e), Arizona Rules of Civil Procedure, the supreme court is responsible for administration of the private process server program and shall adopt rules for administration of the program.

~~1. Role and Responsibilities of the Administrative Director. The director shall have the authority to approve or disapprove matters of administration of the Private Process Server Program that involve the expenditure of program funds. The director may vest in any other person, acting in the director's name and by delegated authority, the authority to exercise or discharge any power, duty or function, normally belonging to the director, whether ministerial or discretionary.~~

2. Role and Responsibilities of the Director. The director as designated by the Az. Const. Art. 6 § 7 shall:

   a. Approve or disapprove matters of administration of the Private Process Server Program

that involve the expenditure of program funds;

b. Appoint and supervise all division staff;

c. Adopt policies and procedures, including forms, for administration of the Private Process Server Program; and

d. Ensure implementation of the applicable laws, court rules, and this code section.

~~2. Role and Responsibilities of the Program Coordinator. The director shall designate a program coordinator. The program coordinator is responsible for the administration of the Private Process Server Program in compliance with the law, Arizona Rules of Court, and Arizona Supreme Court administrative orders and this code section. The program coordinator may delegate any duties and responsibilities to staff.~~

~~a. The program coordinator shall perform tasks of administration of the Private Process Server Program to assist in the decentralized administration of the program in each county in Arizona. The program coordinator shall provide updates to the clerk of the superior court; make recommendations regarding matters pertaining to certification, complaints and investigations; and all other matters relevant to certified private process servers.~~

~~b. The program coordinator shall maintain a list of certified private process servers and shall post this list on the judicial department website. The judicial department website shall include each certificate holder's name and certificate number. The program coordinator may charge for the costs of providing copies of the certification list or any other public records of the program.~~

3. Role and Responsibilities of Division Staff.

a. The director shall designate the division director and other division staff to assist in the administration of the Private Process Server Program in compliance with the law, Arizona Rules of Court, Arizona Supreme Court administrative orders, and this code section. The division director may delegate any duties and responsibilities to division staff.

b. Division staff shall:

(1) Perform tasks of administration of the Private Process Server Program to assist in the decentralized administration of the program in each county in Arizona;
(2) Provide updates to the clerk;

(3) Make recommendations regarding matters pertaining to certification, complaints, and investigations; and all other matters relevant to certified private process servers;
(4) Maintain a list of certified process servers and post this list on the judicial department website. The judicial department website shall include each certificate holder's name, certificate number, county of certification, and any disciplinary action imposed against a certified process server. At a minimum, division staff shall update this list each quarter;
(5) Refer any complaint received regarding the actions of a certified process server to the clerk of the county where the alleged violation took place, pursuant to subsection H.

c. Division staff may:

(1) Charge for the costs of providing copies of the certification list or any other public records of the program; and
(2) Refer complaints to another state agency or entity with jurisdiction, if the supreme court or superior court does not have jurisdiction over the complaint.

4.~~3~~ Role and Responsibilities of the Clerks of the Superior Court. ~~The clerk of the superior court in each county is responsible for distributing and accepting applications and application materials, administering and grading examination, maintaining records, including the register of certified process servers pursuant to Rule 4(e), Arizona Rules of civil Procedure, accepting fee payments, coordinating the receipt of application materials for the presiding judge, notifying the program coordinator of certificates issued, changes of address, renewals, complaints, investigations and final decisions regarding discipline.~~

a. The clerk shall:

(1) Distribute application materials, using the application forms provided by the director, and accept applications and fee payments for initial and renewal of certifications;
(2) Administer and grade the examination for initial certification;
(3) Process the application materials, including fee payments and fingerprints, and forward the application materials to the presiding judge;
(4) Issue initial and renewal certificates to qualified individuals, upon approval by the presiding judge;
(5) Process photographs and issue an identification card to individuals granted certification by the presiding judge;
(6) Maintain records pertaining to applicants for certification and certified process servers, including:
(a) A current list or register of all certified process servers, in a format as provided by the director; and as required pursuant to Rule 4(e), Arizona Rules of Civil Procedure;
(b) Certificates issued or denied;
(c) Contact information on certified process servers, including address and phone number and any changes to the contact information;

(d) Renewal certificates granted or denied;
(e) Complaints, investigations and final decisions regarding complaints;

(7) Provide the following information to division staff:
(a) A report, at least each quarter, on all additions, deletions, and revisions to the certification list, including certificates issued, certificates denied, and changes of address;
(b) A report, at least each quarter, listing all complaints, investigations pending completion, informal and formal disciplinary proceedings, and final decisions regarding discipline. If a final decision regarding discipline of a certified private process server results in suspension or revocation of a certificate, the clerk shall provide the information to division staff within five days of the final order.
(c) An annual report naming the staff assigned responsibility for administering the private process server program in the county along with a current address, phone number, and e-mail address of each staff member.

b. The clerk may:

(1) Assign any duties and responsibilities to staff; and.
(2) Coordinate with clerks in other counties for the provisions of services pursuant to this code section, including processing of identification cards and administration of the examination for initial certification.

~~a. The clerk of the superior court in each county may assign any duties and responsibilities to staff. Annually the clerk shall file a letter with the program coordinator, naming the staff assigned responsibility for administering the Private Process Server Program along with a current address, phone number and e-mail address of each staff member.~~

~~b. The clerk of the superior court in each county shall report quarterly to the program coordinator all additions, deletions and revisions in the certification list. The clerk of the superior court shall maintain a current certification list of all private process servers of certificate holder status on a form approved by the director.~~

~~c. The clerk of the superior court in each county shall provide a quarterly report listing all complaints, investigations pending completion and informal and formal disciplinary proceedings to the program coordinator who will maintain the information for use by the presiding judges as needed.~~

~~d. The clerk of the superior court in each county shall notify the presiding judge if it appears a private process server has violated this code section.~~

~~4~~5. Role and Responsibilities of the Presiding Judges of the Superior Court. The presiding judge: ~~in the county of residence of the applicant, where the applicant applies for certification, is responsible for reviewing all application materials including criminal history information. The presiding judge is also responsible for granting or denying certification to~~

~~private process servers and granting or denying reexamination on a previously failed examination. The presiding judge receives complaints pursuant to subsection H of this code section, and investigates, initiates and adjudicates disciplinary proceedings. The presiding judge may vest in another person the authority to exercise or discharge any power, duty or function originally vested in the presiding judge, whether ministerial or discretionary. The designated person shall exercise these powers while acting in the presiding judge's name and by delegated authority.~~

a. Shall:

(1) Review all application materials, including criminal history information, and make all final decisions regarding the granting or denial of applications for initial and renewal of certification in the county of residence of the applicant;
(2) Review and make all final decisions regarding any other certification issues including granting or denying reexamination for an applicant who has previously failed the initial certification examination; and
(3) Receive complaints pursuant to subsection H and investigate, initiate, and adjudicate disciplinary proceedings.

b. May vest in another judicial officer the authority to exercise or discharge any power, duty, or function originally vested in the presiding judge, whether ministerial or discretionary. The designated person shall exercise these powers while acting in the presiding judge's name and by delegated authority.

E. Initial Certification.

1. Exemptions from Certification. The following persons are exempt from the certification requirements:

a. Any person specially appointed by the court pursuant to Rule 4(d), Arizona Rules of Civil Procedure;

b. Any party to an action or that party's attorney serving process pursuant to Rule 4(d), Arizona Rules of Civil Procedure, and

c. Any person serving a subpoena pursuant to Rule 45, Arizona Rules of Civil Procedure.

2. ~~Qualification for~~ Application for Initial Certification. An applicant for initial certification shall apply for initial certification on approved forms and meet the eligibility requirements and fulfill all the requirements of subsection E(2)(a). ~~Any person if qualified pursuant to subsection E(2)(a) or (b) of this code section may apply for certification.~~

~~a. Qualification for Individual Certification. To become certified or eligible for certification an applicant shall meet the eligibility requirements and fulfill all the requirements of subsection E(2)(c)(1) through (7) of this code section and, pursuant to~~

~~Rule 4(d) and Rule 4(e), Arizona Rules of Civil Procedure~~:

(1) ~~. . . has been a bona fide resident of the State of Arizona for at least one year immediately preceding the application . . .” for certification; and~~
~~(2) . . . shall be not less than twenty-one (21) years of age . . . .”~~

a. Eligibility for Initial Certification. The applicant shall:

(1) Be at least twenty-one years of age;
(2) Be a citizen or legal resident of the United States; and
(3) Possess a high school diploma or a general equivalency diploma evidencing the passing of the general education development test;

b. Government Employee Process Servers.

(1) An individual who serves process entirely within the scope of the individual’s responsibility as a government employee shall apply for certification and demonstrate the ability to pass the examination and meet certification criteria. As provided in A.R.S. § 11-445~~(H)~~(I), a government employee shall submit a completed fingerprint card and pay the applicable fees pursuant to subsection E(2)(c)~~(4)~~(3) ~~of this code section~~. Government employee process servers are not subject to any fees other than the fingerprint fee.
(2) A government employee process server may carry any employer-issued identification that accurately identifies the employee as a government employee process server in addition to the identification card issued by the clerk ~~of the superior court~~ pursuant to subsection E(4)(a) ~~of this code section~~.
(3) Government employee process servers who serve process in any capacity outside the scope of employment as a government employee process server shall obtain certification pursuant to this code section and shall follow all policies that apply to private process servers when serving process outside the scope of employment as a government employee process server.

c. ~~Procedures for~~ Application for Initial Certification. ~~To apply for certification, an~~ An applicant shall:

(1) Provide a completed application for certification ~~on~~ in an approved ~~form~~ format obtained from and filed with the clerk ~~of the superior court~~ in the county of residence of the applicant. From and after January 1, 2013, a non Arizona resident may apply for certification in any county. ~~The applicant shall sign the application and have it duly verified under oath;~~ The applicant shall submit documentation of U.S. citizenship or alien status, with the application, in compliance with A.R.S. § 41-

1080;

(~~2~~) ~~Execute an affidavit stating, pursuant to Rule 4(e), Arizona Rules of Civil Procedure . . . that the applicant will well and faithfully serve process in accordance with the law . . .” and the applicant is and was a legal resident of the State of Arizona for at least one year prior to application and has continually resided in Arizona during this time period. The affidavit may include relevant language stating the applicant understands the need to be available to testify and that providing testimony regarding the service of process is a common and inherent duty to this profession;~~

(2~~3~~) Pass an examination for initial certification, ~~administered by the clerk of the superior court~~ as prescribed in subsection E(3) ~~of this code section~~;

(3~~4~~) Pursuant to A.R.S. § 11-445~~(H)~~(I):

> ~~. . .~~[F]~~f~~urnish a full set of fingerprints to enable a criminal background investigation to be conducted to determine the suitability of the applicant. The completed applicant fingerprint card shall be submitted with the fee prescribed in section § 41-1750 to the department of public safety. The applicant shall bear the cost of obtaining the applicant’s criminal history record information. The cost shall not exceed the actual cost of obtaining the applicant’s criminal history record information. Applicant criminal history records checks shall be conducted pursuant to section § 41-1750 and Public Law 92-544~~;~~.

(a) The applicant is responsible for providing the clerk ~~of the superior court~~ with ~~a~~ readable fingerprints ~~card~~. The applicant shall pay all costs or fees attributable to any subsequent refingerprinting and resubmission of fingerprints due to unreadable prints. ~~The applicant shall only use the fingerprint card issued in the application packet.~~ A law-enforcement agency shall perform the fingerprinting;

(b) The clerk ~~of the superior court~~ shall submit completed applicant fingerprints ~~cards~~ and the fees to the Arizona Department of Public Safety (ADPS). Pursuant to A.R.S. § 11-445~~(H)~~(I), “~~. . .~~The department of public safety is authorized to exchange the submitted applicant fingerprint card information with the federal bureau of investigation for a federal criminal records check.~~. . .;~~”;

(c) If definitive fingerprints are not obtainable, the clerk ~~of the superior court~~ shall require the applicant to make a written statement, under oath, that the applicant has no prior arrests, charges, indictments, or felony or misdemeanor convictions other than as disclosed on the application. If the applicant is unable to provide this statement, the clerk ~~of the superior court~~ shall refuse to accept the application;

(4~~5~~) Provide additional background information, upon ~~Upon~~ the request of the presiding judge, clerk, or designee~~, provide additional background information~~;

(5~~6~~) Pay all fees as authorized by law to the clerk ~~of the superior court~~ pursuant to A.R.S. § 12-284; and

(6~~7~~) ~~Provide two color photographs, (2" X 2"), and references as required by policy adopted by the director.~~ Provide photographs of a number and in the format prescribed in policies adopted by the director.

3. Examination.

a. Initial Certification State Examination. Each applicant for certification ~~or renewal~~ shall ~~personally~~ take and pass the initial certification state examination provided by the director ~~and administered and scored by the clerk of the superior court~~. The clerk ~~of the superior court~~ shall ~~give~~ administer the initial certification state examination to each applicant ~~an initial examination~~.

b. The clerk shall communicate the applicant's passage or failure of the examination in writing to the applicant not more than ten days from the date the applicant took the examination:

(1) The applicant will not receive the examination score.
(2) If the applicant fails the examination, the clerk shall inform the applicant that a reexamination is required to meet all qualifications for initial certification and shall provide the applicant with information on the procedures for reexamination.
(3) An applicant may, on written request, review the applicant's answer sheets and grades under the terms and conditions prescribed by the director.
(4) The applicant shall not copy materials provided for the applicant's review.
(5) The applicant shall conduct the review during business hours in the presence of the clerk.

~~b. Reexamination. If the applicant fails the initial examination, the applicant may sit for one reexamination. The examination provided to the applicant for reexamination shall be a different examination than the one the applicant used for the initial examination. The applicant shall take the reexamination within 90 days of the date of filing the application. If the applicant fails the reexamination, the applicant shall wait 90 days from the date of the reexamination to submit a request for an additional reexamination pursuant to subsection E(3)(b)(1) of this code section.~~

~~(1) The applicant may submit a request in writing addressed to the presiding judge requesting consideration for an opportunity to reapply and sit for the examination an additional time. Proof of attendance and satisfactory completion shall accompany the written request for a course of study specific to the private process server profession. If the presiding judge approves reexamination, the entire application process begins again, including the payment of fees. The presiding judge has the discretionary authority to deny or approve a request for reexamination.~~

c. Reexamination. If the applicant fails the initial certification state examination on the first attempt, the applicant may retake the examination one time under the following conditions:

(1) The applicant is not otherwise disqualified from retaking the examination;

(2) The applicant takes the reexamination within 90 days of the date of filing the application;
(3) The applicant is provided and shall take a different examination than the one the applicant used for the initial reexamination;
(4) If the applicant fails the reexamination, the applicant shall wait 90 days from the date of reexamination to submit a written request for an additional reexamination under the following conditions:
(a) The applicant may submit a request in writing addressed to the presiding judge requesting consideration for an opportunity to reapply and sit for the initial certification state examination for a third time;
(b) Proof of attendance and satisfactory completion shall accompany the written request for a course of study specific to the private process server profession to demonstrate the circumstances and reasons for believing the applicant now possesses the knowledge of the minimum competencies as a private process server to pass the examination; and
(c) If the presiding judge grants approval for the applicant to take the examination for a third time, the entire application process begins again, including the payment of fees. The presiding judge may deny or approve a request for reexamination. The decision by the presiding judge to deny the applicant's request to sit for a third examination is final and there is no right to a hearing. If the applicant's request to sit for a third examination is denied, the applicant may not file a new application until twelve months after the presiding judge's decision to deny.

~~c~~d. The director shall provide multiple versions of the initial certification state examination to the clerk ~~of the superior court,~~ and the clerk ~~of the superior court~~ may not use any other examinations. Applicants and the public may not obtain copies of the examination or the answer sheet.

~~d~~e. The director shall establish the passing score on the initial certification state examination.

~~e~~ ~~The clerk of the superior court shall communicate the applicant's examination score verbally or in writing to the applicant not more than ten days from the date the applicant took the examination. If the applicant passes the examination score, the applicant will receive the examination score. If the applicant fails the examination, the clerk of the superior court shall provide the applicant with the examination score, an indication of the general areas of the statutes, rules, code sections and case law where the applicant missed questions and the procedures for reexamination.~~

~~(1) An applicant may, on written request, review the applicant's examination papers and grades under the terms and conditions prescribed by the director.~~
~~(a) The applicant shall not copy materials provided for the applicant's review.~~
~~(b) The applicant shall conduct the review during business hours in the presence of~~

~~program staff.~~

f. An applicant is disqualified from taking any future examination if the presiding judge, based upon information forwarded to the presiding judge by the clerk, determines the applicant engaged in fraud, dishonesty, or corruption while taking the examination or any subsequent examination.

4. Decision Granting ~~Provisional and Standard~~ Certification.

a. If the presiding judge is satisfied an applicant meets the qualifications for certification, the clerk ~~of the superior court~~, upon order of the judge, shall promptly issue certification with an identification card to an applicant qualified for certification in accordance with this code section. Pursuant to Rule 4(e), Arizona Rules of Civil Procedure:

> ~~. . .~~ [U]~~u~~pon approval of the court or presiding judge thereof, . . . the applicant shall . . . be registered with the clerk as a private process server until such approval is withdrawn by the court in its discretion. The clerk shall maintain a register for this purpose. The private process server shall be entitled to serve in such capacity for any court of the state anywhere within the State.

~~a. Provisional Certification. The presiding judge may grant provisional certification pending receipt of the information requested in the criminal history record check if the applicant provides a completed application, fingerprint card and successfully passes the examination, pursuant to this code section. Before granting provisional certification, the presiding judge may require additional background information reasonably necessary to determine if the applicant meets the qualifications specified in this code section. Provisional certification shall expire 120 days after it is granted unless the presiding judge extends the time period at the judge's discretion.~~

b. ~~Standard~~ Certification. Upon receipt of the state and national criminal history records checks, pursuant to ~~the~~ A.R.S. §§ 41-1750 and -1758, and applicable federal laws, the presiding judge shall consider the information and grant or deny ~~the standard~~ certification. Before granting ~~standard~~ certification, the presiding judge may require additional background information reasonably necessary to determine if the applicant meets the qualifications specified in this code section. For good cause shown, the presiding judge may grant certification to an applicant, pending receipt of the national criminal history record checks, if there is a delay in the processing of the criminal history checks that is beyond the control of the applicant or the court.

c. The presiding judge may transfer the certification of an individual to the county of residence or another county if appropriate.

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

5. Denial of Initial Certification. The presiding judge:

a. 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 subsection (E) or has not submitted a complete application with all deficiencies corrected, with the applicable documents and fees.

~~a~~b. The presiding judge may refuse to certify an applicant if one or more of the following is found:

(1) Material misrepresentation, omission, ~~or~~ fraud, dishonesty, or corruption on the part of the applicant in the application for, or attempt to obtain, certification, including the examination;
(2) A record of any act constituting material misrepresentation, omission, dishonesty, corruption, or fraud on the part of the applicant in business or financial matters;
(3) A record of conduct showing the applicant is incompetent or a source of injury and loss to the public;
~~(4) A record of repeated complaints by the public or the court;~~
~~(5)~~(4)A record of conviction by final judgment of a misdemeanor or felony, if the crime has a reasonable relationship to the practice of the private process server profession or occupation, regardless of whether civil rights have been restored. Pursuant to A.R.S. § 13-904(E), if the person's civil rights have been restored and there is no reasonable relationship to the practice of the private process server profession or occupation, the presiding judge shall not deny certification solely based on the record of conviction;

(5~~6~~)A record of denial, revocation, suspension, or any disciplinary action ~~censure~~ of any professional or occupational license or certificate of the applicant by any federal, state, or local government. The judge shall consider whether the underlying conduct in any other disciplinary action is relevant to certification as a private process server;
(6) A record of a termination, suspension, probation, or any other disciplinary action regarding past employment if the underlying conduct is relevant to certification as a private process server;
(7) The applicant has been found civilly liable by final judgment in an action involving fraud, misrepresentation, material omission, misappropriation, theft, or conversion;
(8) The applicant is currently on probation or parole or named in an outstanding arrest warrant;
~~(9) The applicant has not submitted fingerprints pursuant to subsection E(2)(c)(4) and the presiding judge has not received and reviewed the criminal background~~

~~analysis, or~~

(9)~~(10)~~The applicant has violated any Arizona law, Arizona Rules of Court, ~~and~~ this code section, or court orders governing private process servers~~.~~;

(10)The applicant has violated any decision, order, or rule issued by a professional regulatory entity;

(11) The applicant has violated any order of a court, judicial officer, or administrative tribunal;

(12) The applicant has made a false or misleading statement or verification in support of an application for a certificate filed by another person;

(13)The applicant has made a false or misleading oral or written statement to judicial officers, judicial staff or division staff;

(14)The applicant failed to disclose information on the certification application subsequently revealed through the background check; or

(15)The applicant failed to respond or furnish information to the presiding judge, clerk, or judicial staff 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.

c. The presiding judge shall 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)(5)(b)(4):

(1) The applicant's age at the time of the conviction;

(2) The applicant's experience and general level of sophistication at the time of the pertinent conduct and conviction;

(3) The degree of violence, injury, or property damage, and the cumulative effect of the conduct;

(4) The applicant's level of disregard of ethical or professional obligations;

(5) The reliability of the information regarding the conduct;

(6) If the offenses involved fraud, deceit, or dishonesty on the part of the applicant resulting in harm to others;

(7) The recency of the conviction;

(8) Any evidence of rehabilitation or positive social contributions since the conviction occurred as offered by the applicant;

(9) The relationship of the conviction to the purpose of certification;

(10)The relationship of the conviction to the applicant's field of certification;

(11) The applicant's candor during the application process;

(12)The significance of any omissions or misrepresentation during the application process, and

(13)The applicant's overall qualifications for certification separate from the conviction.

~~b. An applicant's failure to disclose information on the application that is subsequently revealed through the fingerprint background check may constitute good cause for the~~

~~presiding judge to automatically deny certification.~~

~~c. Mandatory Denial. The presiding judge shall refuse to certify the applicant if the applicant does not meet the qualifications or eligibility~~.

d. The presiding judge shall promptly notify all applicants denied certification of the reasons for the denial, and the applicant's right to a hearing.

e. An applicant is entitled to a hearing, pursuant to this ~~code section~~ subsection, on the decision to deny certification upon written request received within fifteen days after receipt of notice of the denial. The applicant is the moving party at the hearing and has the burden of proof.

f. Computation of Time. For the purposes of this 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. When the period of time specified or allowed, exclusive of any additional time allowed under subdivision (e) of this rule, is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When the 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.

F. Role and Responsibilities of Certificate Holders.

1. Code of Conduct. Each certified process server shall adhere to the code of conduct in subsection (J) ~~incorporated as Appendix A~~.

2. Conflict of Interest. Pursuant to Rule 4(d), Arizona Rules of Civil Procedure, "~~. . .~~ a private process server ~~. . .~~" "~~. . .~~ [S]~~s~~hall not be a party, an attorney, or the employee of an attorney in the action whose process is being served."

3. Identification Cards.

   a. The identification card is the only official process server identification the court shall issue pursuant to subsection E(4) ~~of this code section~~. A certified process server shall carry the identification card at all times when serving process and promptly display it when requested by an interested party. This is the only form of identification a certified

process server may use except government employee process servers who may use a government issued identification card in conjunction with the private process server identification card.

b. Certified private process servers shall report lost or stolen identification cards to the issuing clerk ~~of the superior court~~ within three days of discovery of the loss. Upon filing an affidavit of loss with the clerk ~~of the superior court~~ and payment of any applicable fee, the clerk ~~of the superior court~~ shall issue a replacement identification card.

c. Upon suspension or revocation of certification, the certificate holder shall surrender the issued identification card to the clerk ~~of the superior court~~ within three days.

4. Change of Name or Address. ~~All~~ A certificate ~~holders~~ holder shall notify the clerk ~~of the superior court~~ in the county of certification of any change in the legal name, business address, mailing address, ~~or~~ home address, email address, or phone number of the certificate holder within 30 days of any change.

5. Assumed 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.

6. Fees. The applicant shall pay all required fees for certification, examination, and renewal of certification. The clerk ~~of the superior court~~ shall collect in advance these fees, which are non-refundable. Pursuant to A.R.S. § 11-445~~(H)~~(I), "~~. . .~~ A private process server may charge such fees for services as may be agreed upon between the process server and the party engaging the process server."

7. Continuing Education. Certified private process servers shall complete ten hours of continuing education each twelve months and shall submit documentation of completion of this continuing education in ~~on~~ a ~~form~~ format approved by the director with the application for renewal of certification. Certified private process servers shall complete continuing education classes that are relevant to the work of a process server, pursuant to subsection L ~~policies adopted by the director~~.

8. Employment Status of Private Process Servers.

a. Certified private process servers are not employees of the court, are not appointed by the court and may not in any way represent themselves as such.

b. Private process servers may not, in any way, represent themselves as "peace officers" unless they are peace officers pursuant to Arizona or federal law. Approval as a certified private process server does not, in itself, confer peace officer status on the holder.

G. Renewal of Certification.

1. Expiration Date ~~of Certification~~. All certificates expire at midnight, every three years from date of issuance. All certifications shall continue in force until expired, voluntarily surrendered, placed on inactive status, suspended, or revoked.

   a. ~~All certificates expire at midnight, every three years from date of issuance. All certifications shall continue in force until expired, suspended, revoked or terminated. A certificate shall expire as of the expiration date unless the certificate holder submits a renewal application and pays the accompanying fees by the expiration date.~~ When a private process server has filed a timely and complete ~~completed~~ application for renewal ~~prior to the expiration of the existing~~ of certification, the existing certification does not expire until the administrative process for review of the renewal application has been completed. ~~presiding judge has approved or denied the application.~~

   b. The presiding judge may request an informal interview with the applicant for renewal 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.

   ~~b~~c. If the presiding judge denies the renewal application, the existing certification does not expire until the last day for seeking a hearing on the decision to deny, pursuant to subsection H or, if a hearing is requested, until the final decision is made by the presiding judge pursuant to subsection H.

   ~~c. The presiding judge shall treat a renewal application filed after the expiration date as a new application.~~

   d. The certificate of a certificate holder who does not supply a complete and timely renewal application and payment of the renewal fee shall expire as of the expiration date of the certificate. If the certificate holder files an application within twelve months after the expiration of the certificate, the presiding judge shall consider the length of time that has lapsed since the expiration of the certificate, the private process server's stated reasons for failing to renew the certificate timely, and the process server's compliance with all other provisions of this code section, including the completion of continuing education credits. The presiding judge may require the private process server to submit additional information or complete additional continuing education before renewing the certificate, or any other actions the judge deems appropriate. The presiding judge shall not allow a certified private process server to retake the initial certification examination as an alternative to completing continuing education credits.

   ~~d~~e. The expiration provisions described in subsection G(1)(a) ~~of this code section~~ do not affect the authority of the presiding judge to take disciplinary action, including suspension or revocation of the certification of a certificate holder if a complaint or investigation is pending prior to the expiration date.

2. Voluntary Surrender. A certificate holder in good standing may voluntarily surrender a certificate; however, this surrender is not valid until accepted by the presiding judge. The presiding judge may require additional information ~~which is~~ reasonably necessary to determine if the certificate holder has violated any provision of the statutes, court rules, and this code section. ~~The presiding judge shall, within 120 days of the voluntary surrender of the certification, either file a notice of hearing regarding a complaint and disciplinary action, or accept the surrender.~~ 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. If the presiding judge accepts the voluntary surrender, the clerk shall designate the certificate of the certificate holder as a "surrendered certificate holder in good standing." The presiding judge shall notify the certificate holder in writing within ten days after the acceptance of the surrender. The clerk shall update the list of certified private process servers to reflect this change in status and shall notify division staff.

   b. The presiding judge shall not accept the surrender if there is a complaint pending against the certificate holder. However, this does not preclude the presiding judge for entering into a consent agreement to resolve the pending complaint, by terms including the voluntary surrender of the certificate, pursuant to subsection H.

   c. The presiding judge shall, within 120 days of the voluntary surrender of the certification, either accept the surrender or institute disciplinary proceedings pursuant to subsection H. If the presiding judge subsequently imposes a sanction pursuant to subsection H upon the certificate of the surrendered certificate holder, the clerk shall change the status of the certificate holder from "surrendered certificate holder in good standing" to that of a person so disciplined.

3. Application. A certified private process server whose certificate is in good standing may renew by filing a completed certification application for renewal, paying all fees, ~~two color photographs (two inches by two inches)~~ and submitting all required documents, including documentation of completion of the required hours of continuing education pursuant to subsection L ~~of this code section~~. The applicant shall file the application with the clerk ~~of the court~~ in the county of residence of the applicant. From and after January 1, 2013, a non Arizona resident who has been granted certification as a private process server, shall apply for renewal of certification in the county where the initial application for certification was filed and certification was granted.

4. Additional Information. Before granting renewal of certification, the presiding judge may require additional information reasonably necessary to determine if the applicant continues to meet the qualifications specified in this code section. This may include fingerprinting, reexamination, ~~and~~ background information, and updated photographs.

5. Decision Regarding Renewal.

   a. If the presiding judge is satisfied that the applicant continues to meet all qualifications for certification, as specified in subsection E(2) ~~of this code section~~, the presiding judge shall renew the certification of the applicant. The presiding judge may refuse to renew the certification of an applicant for any of the reasons specified in subsection E~~(5) of this code section~~. The presiding judge shall promptly notify all applicants granted renewal of certification.

   b. The presiding judge shall promptly notify an applicant denied renewal of certification, of the reasons for the denial and the applicant's right to a hearing.

   c. An applicant is entitled to a hearing, pursuant to subsection H ~~this code section~~, on the decision to deny renewal of certification upon written request received within fifteen days after receipt of notice of the denial. The applicant is the moving party at the hearing and has the burden of proof.

6. Reinstatement after Suspension, Revocation, or Expiration of Certification.

   a. A private process server whose certificate has been suspended or revoked by a final order of the presiding judge, or whose certificate has expired, or been voluntarily surrendered, may apply for reinstatement under the following conditions:

      (1) An applicant for reinstatement shall file a written application for reinstatement with the clerk, accompanied by the appropriate fees and the following documents:
         (a) The reinstatement form and a copy of the final order of suspension or revocation, or date of voluntary surrender or expiration of certification;
         (b) 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 presiding judge or date of expiration or surrender of the certificate; and the date of application for reinstatement;
         (c) 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;
         (d) 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;
         (e) 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 the clerk receives the application for reinstatement;
         (f) 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 final order of suspension until the date the clerk receives the reinstatement application;

(g) 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 the clerk receives the application for certification;

(h) 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 expiration or voluntary surrender of the certificate;

(i) A statement of facts supporting reinstatement and recertification again as a certified process server, and

(j) A statement of all facts demonstrating the applicant's rehabilitation during the period of time from the date of the presiding judge's order revoking the applicant's certificate or suspending the applicant's certificate, until the date the clerk receives the application for reinstatement or initial certification.

(2) The presiding judge may require additional information demonstrating the applicant meets the minimum competencies of the profession or occupation. The presiding judge may require the applicant sit for and pass the initial certification 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 that the applicant meets the minimum competencies of the profession or occupation. An applicant denied reinstatement by the presiding judge has the right to a hearing pursuant to subsection (H), 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.

(3) Upon submission of all reinstatement requirements of subsection (G), the applicant shall meet all requirements of initial certification pursuant to subsection (E). The applicant for reinstatement after a suspension or revocation shall also pay the fee for reinstatement.

b. The presiding judge shall not issue any certification under this section to any person whose certification has been suspended until:

(1) The person seeking reinstatement of a suspended certificate has demonstrated all the requirements of the suspension order have been met, and

(2) The person qualifies in accordance with the applicable provisions of this section.

c. The presiding judge shall not issue any certification under this section to any person whose certification has been revoked until:

(1) One year has passed from the date of the presiding judge's final order of revocation;

(2) The person seeking certification provides proof of satisfaction of any and all requirements in the order of revocation, and
(3) The person again qualifies in accordance with the initial certification provisions of subsection (E)**.**

H. Complaints, Investigation, Hearings and Disciplinary Action.

1. Complaints. Filing and General Provisions. ~~The presiding judge may initiate or accept complaints concerning private process servers and initiate disciplinary action. The county where the basis for the complaint or discipline occurred shall handle all complaints filed against private process servers. All judicial officers and their designee shall, and any person may, notify the presiding judge if it appears a certificate holder has violated this code section. A complainant shall make the complaint in writing with sufficient specificity to warrant further investigation. The complaint shall include the name and telephone number of the complainant.~~

a. Filing of Complaint. All judicial officers, clerks of court, court employees, and certificate holders shall, and any person may, notify the presiding judge if it appears a certificate holder has violated applicable statutes, court rules, or this code section. The complainant shall make the complaint in writing with sufficient specificity to warrant further investigation. The complaint shall include the name, telephone number, and address of the complainant. The complainant shall file the complaint with the clerk in the county where the alleged violation by the certified process server occurred. The clerk shall forward the complaint to the presiding judge.

~~a. A certificate holder is subject to disciplinary action if the presiding judge finds one or more of the following applies to the certificate holder:~~

~~(1) Wilful violation of or wilful noncompliance with a court order, any court rule, Arizona law, or this code section;~~
~~(2) The existence of any cause for which original certification or any renewal of the certification could have warranted denial as described in subsection E(5) or G(5) of this code section;~~
~~(3) Failure to perform any duty to discharge any obligation required by this code section;~~
~~(4) Violation of any federal or state statute, administrative order, rule, code provision or policy regarding service of process or regulating the profession;~~
~~(5) Falsification or misrepresentation of any document potentially filed with the court;~~
~~(6) Engaging in the practice of law or otherwise providing legal advice while serving process;~~
~~(7) Advertising or otherwise representing services in a false, fraudulent or misleading manner;~~
~~(8) Display of a uniform, title, insignia, badge, business card, identification card or other means of identification or making a statement that would lead a person to believe the certificate holder is an employee of the federal government, state government or any~~

~~political subdivision of state government unless authorized by proper authorities to do so;~~

~~(9) Use of letterhead, business cards, or advertising on any media in any manner to represent the certificate holder is an employee of the federal government, state government or any political subdivision of a state government unless authorized by proper authorities to do so;~~

~~(10)Failure to display the identification card issued to persons who may have reasonable cause to verify the validity of the certification;~~

~~(11)Failure to cooperate in an inquiry, investigation or disciplinary action by:~~

~~(a) Not furnishing papers or documents;~~

~~(b) Not furnishing in writing a full and complete explanation of a matter contained in a complaint when requested;~~

~~(c) Not responding to subpoenas issued, regardless of whether the recipient of the subpoena is accused in the proceeding;~~

~~(12)Commission of any act involving moral turpitude, dishonesty or corruption whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action;~~

~~(13)Unprofessional conduct, including the failure to exercise appropriate judgment regarding service of process; and~~

~~(14)Wilful violation or wilful noncompliance of any other provision of the Code of Conduct.~~

b. Complaints Initiated by the Presiding Judge. In accordance with subsection H, the presiding judge may direct court staff to investigate allegations of acts of misconduct or violations of statutes, court rules, or this code section 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.

c. Anonymous Complaints. The presiding judge 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 regarding the expiration of the certificate do not affect the authority of the presiding judge to:

(1) Initiate a complaint;
(2) Investigate a complaint; or
(3) Take disciplinary action regarding the certificate of a certificate holder.

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 the presiding judge, receive notice of any public proceeding concerning the complaint or any consent agreements. The complainant submits to the jurisdiction of the court for all purposes relating to the proceedings.

f. Non-abatement. Unwillingness, failure of the complainant to cooperate with judicial officers, judicial staff, staff of the clerk of the court, or division staff, 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. Information or documents obtained or generated by the presiding judge, clerk, director, division staff, or court employees during an open investigation, or received in an initial report of misconduct, are confidential except as mandated by court rules or this section.

(1) Confidential information may be disclosed during the course of an open investigation:
(a) To judicial officers, court staff, the attorney general, county attorney, law enforcement, and other regulatory officials;
(b) If the presiding judge 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) Upon a determination of probable cause, 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 presiding judge 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) The address and phone number of the complainant shall remain confidential.

2. Grounds for Discipline. A certificate holder is subject to disciplinary action if the presiding judge finds the certificate holder has engaged in one or more of the following:

a. Failed to perform any duty or discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, or this code section;

b. Failed to cooperate or supply information to the presiding judge, clerk of the court, judicial staff, or division staff by the specific time stated in any request;

c. Aided or assisted another person to provide services requiring certification if the other person does not hold the required certification;

d. Conviction of a criminal offense while certified by final judgment of a felony relevant to certification;

e. Failed to provide information regarding a criminal conviction;

f. Exhibited gross negligence;

g. Exhibited incompetence in the performance of duties;

h. Evaded service of a subpoena or notice of the presiding judge;

i. The existence of any cause for which original certification or any renewal of the certification could have warranted denial as described in subsection E or G.

j. 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 certificate;
(2) Failed to comply with any court order or other regulatory agency order relevant to private process servers;
(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 terms of a consent agreement or restriction of a certificate;
(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 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) Performed the responsibilities or duties of the profession or occupation when medically or psychologically unfit to do so;
(14) Engaged in habitual substance abuse;
(15) Engaged in undue influence over a client or customer to the benefit, financial or otherwise, of the certificate holder or a third party; or
(16) Violated any statute, court rule, or this code section regarding a confidentiality requirement.

~~2~~3. Initial Screening. The presiding judge shall determine if a complaint warrants further

investigation and evaluation. If the complaint is outside the jurisdiction of the Private Process Server Program, the presiding judge shall dismiss the complaint. The presiding judge may refer the complaint to another state agency or entity with jurisdiction, if appropriate.

~~3~~4.Preliminary Investigation. If warranted, the presiding judge shall have a prompt, discreet and confidential investigation of the complaint made.

~~4~~5. Request for Response from Certificate Holder. The presiding judge shall have the complaint sent to the certificate holder within a reasonable period of time after commencement of the investigation and shall require the certificate holder provide a written response. The presiding judge shall not proceed with disciplinary action under this code section without providing this notice and the opportunity to respond.

~~5~~6.Review of Complaint and Investigation. Upon completion of an investigation, the presiding judge may:

a. Determine no violation exists and dismiss the complaint;

b. Order further investigation;

c. Determine the complaint is appropriate for resolution without proceeding to formal disciplinary proceedings, or

d. Determine there is probable cause for belief in the existence of facts warranting formal disciplinary proceedings.

~~6~~7. Emergency Suspension. If the presiding judge finds the public health, safety or welfare requires emergency action and incorporates a finding to that effect in the order, the presiding judge may order ~~a summary~~ emergency suspension of the certification of a certificate holder pending proceedings for revocation or other action. The presiding judge shall institute these proceedings within 30 days of the issuance of the emergency suspension order. Upon order of the presiding judge, the clerk ~~of the superior court~~ shall immediately notify all presiding judges ~~of the superior court~~, other clerks ~~of the superior court~~ and the ~~program coordinator~~ division staff of any ~~summary~~ emergency suspension of a certificate holder. Upon receipt of the notice of emergency suspension, division staff shall immediately update the website listing of the private process server to designate the emergency suspension of the certificate.

~~7. Confidentiality. Information or documents obtained or generated by the presiding judge, clerk of the superior court, director, program coordinator or court employees during an open investigation or received in an initial report of misconduct are confidential except as mandated public record by the Arizona Supreme Court Rules. Upon determination that a complaint requires formal disciplinary action and upon resolution of any complaint or investigation, records obtained during the investigation become open and are available for~~

~~public inspection.~~

8. Formal Disciplinary Proceedings.

   a. Commencement. The presiding judge may commence formal proceedings if the judge finds reasonable cause to believe the certificate holder has committed misconduct under this code section and the complaint is not appropriate for resolution by informal discipline. The presiding judge may, upon commencement of formal proceedings, select a hearing officer or other appropriate designee pursuant to subsection H(10) ~~of this code section~~. For uniformity, consistency and ease of reading, the term "hearing officer" throughout this code section ~~regarding disciplinary action~~ refers to the presiding judge, the hearing officer or other officer designated by the presiding judge.

   b. Notice to Certificate Holder. The presiding judge shall have the formal statement of charges served on the certificate holder with a notice advising the certificate holder of the certificate holder's rights pursuant to this code section. This notice shall comply with the provisions of subsection H(12) ~~of this code section~~.

9. Request for Hearing. All demands for hearing shall specify:

   a. The section of this code section that entitles the person to a hearing;

   b. The factual basis supporting the request for hearing, and

   c. The relief demanded.

10. Appointment of Hearing Officer. The presiding judge may appoint a judge or a hearing officer to hold a hearing when required to do so pursuant to this code section, or upon written demand by a person entitled to a hearing, pursuant to this code section.

11. Time line for Hearing. The hearing officer shall ensure the hearing is held within 45 days of receipt of the request, if the request is made by a certificate holder, unless postponed by mutual consent for good cause. If the request is from the presiding judge, the hearing officer shall hold the hearing as soon as practical at the discretion of the hearing officer.

12. Notice of Hearing. The hearing officer shall prepare and give the parties notice of the hearing at least fifteen days prior to the date set for the hearing. The notice shall include the following information:

    a. A statement of the time, place and nature of the hearing;

    b. A statement of the legal authority and jurisdiction for conduct of the hearing;

c. A reference to the particular sections of the statutes, this code section and policies involved;

d. A short and plain statement of the allegations or factual basis supporting the relief requested. Amendments to the statement are permissible, and

e. If the hearing date has not previously been set, a statement indicating the certificate holder will be afforded a hearing upon request if the certificate holder makes the request in writing within ten days of receipt of the notice.

f. Personal service or service by certified mail, return receipt requested to the last business address of record with the clerk of the superior court, will accomplish service of the notice. For proof of service, a verified statement service was completed shall be filed with the hearing officer. Service by mail is complete upon deposit in the United States mail.

g. If a party is represented by an attorney, the attorney shall receive service.

13. Filings, Answers and Pleadings. A party shall file answers to notices within ten days after the date the notice is served, unless otherwise ordered by the hearing officer. Answers shall comply with Rule 8 of the Arizona Rules of Civil Procedure. If a party fails to file an answer within the time provided, the person is in default and the hearing officer may determine the proceeding against the party and admit one or more of the assertions contained in the notice. The hearing officer shall determine any defenses not raised in the answer are waived.

    a. Parties shall file all motions at least five days prior to the scheduled hearing date, unless otherwise ordered by the hearing officer.

    b. Parties shall file responses to motions within five days of the filing of the motion.

    c. The hearing officer and all parties to the proceeding shall receive copies of all filings.

    d. All filings shall comply with Rule 5(h), Arizona Rules of Civil Procedure.

14. Discovery.

    a. No discovery is permitted, except as provided in this code section, unless mutually agreed to by the parties or permitted 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. The hearing officer, on the hearing officer's motion or upon request, may require, prior to hearing, the disclosure of documentary evidence intended for use at the hearing, provided the evidence is not privileged.

d. Parties may take depositions for use as evidence of witnesses who cannot be subpoenaed or are otherwise unable to attend the hearing. To take a deposition, a party shall file with the hearing officer a written motion, with 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.

e. Parties shall file responses to requests for depositions, including motions to quash, within five days after the filing of the request for deposition.

f. If a deposition is permitted, a subpoena and written order shall be issued. The subpoena and order shall identify the person to be deposed, scope of testimony to be taken, documents, if any, to be produced, and 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.

15. Subpoenas. For the purposes of investigations, hearings or other proceedings under this code section, the hearing officer may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual concerning the subject of any hearing or investigation. Subpoenas shall be issued, served and enforced in compliance with 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 subpoenas.

16. Prehearing Conference. The hearing officer may order 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 any or all of the following actions:

a. To reduce or simplify the issues for adjudication;

b. To dispose of preliminary legal issues, including ruling on pre-hearing motions;

c. To stipulate to the admission of uncontested evidence, facts and legal conclusions;

d. To identify witnesses, and

e. To consider any other matters that will aid in the expeditious conduct of the hearing.

17. Procedure at Hearings.

a. The hearing officer shall preside over the hearing. The hearing officer shall have the authority to decide all motions, conduct prehearing conferences, 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. 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; and

(2) Any person may represent themselves or appear through counsel. An attorney who intends to appear on behalf of a party shall promptly notify the hearing officer, providing the name, address and telephone number of the party represented and the name, address and telephone number of the attorney.
(3) All persons appearing before the hearing officer in any proceeding shall conform to the conduct expected in the Arizona Superior Court.

c. Conduct of Hearing.

(1) The hearing officer may conduct the hearing in an informal manner and without adherence to the rules of pleading or evidence. The hearing officer shall require 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. All hearings are open to the public.
(2) The hearing officer shall require that all testimony considered 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.

d. Record of Hearing.

(1) The hearing officer shall ensure the oral proceedings or any part of the oral proceedings are electronically recorded and transcribed on request of any party. The party making the request shall pay the cost of the transcript.
(2) A competent ~~court~~ reporter shall make a full stenographic record of the proceedings, if requested by a party, within five days prior to a hearing. The cost of the transcript is the responsibility of the requesting party. The hearing officer may require the

prepayment or a monetary deposit to cover the cost of the transcript. If transcribed, the record is a part of the court's record of the hearing and any other party with a direct interest shall receive a copy of the stenographic record, at the request and expense of the party. If no request is made for a stenographic record, the hearing officer shall ensure the proceedings are recorded as described in subsection H(17)(d)(1) of this code section.

18. Rehearing. The hearing officer may grant a rehearing or reargument of the matters involved in the hearing upon written request of a party to a hearing filing the request with the hearing officer. The party shall make the request within fifteen days after any order made pursuant to a hearing was mailed or delivered to the person entitled to receive the order. The hearing officer shall decide to grant or deny the request within 30 days of the date of filing of the request. A party shall base the request for rehearing or review upon one or more of the grounds listed in Rule 59, Arizona Rules of Civil Procedure, which materially affected the rights of a party and shall conform to the requirements of Rule 59. The hearing officer shall permit any party served with a request for rehearing to file a response within fifteen days of service.
19. Decisions and Orders. The hearing officer shall render the final decision within 30 days of the closing of the record of a hearing. The hearing officer shall render the final decision in writing and shall include findings of fact and conclusions of law, separately stated. If set forth in statutory language, a concise and explicit statement of the underlying facts shall accompany findings of fact. Parties shall receive notice of any decision or order either personally or by certified mail return receipt to the last known address.

20. Possible Actions <u>for Resolution of a Complaint.</u>

    a. Upon completion of an investigation concerning alleged misconduct by a certificate holder, which may or may not include <u>informal or formal disciplinary proceedings or</u> a hearing, the hearing officer shall do one or more of the following:

    ~~(1) Determine no violation exists and dismiss the complaint;~~
    ~~(2) Mandate additional training 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;~~
    ~~(3) Issue a letter of concern or warning; Mandate additional training Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules or this section and order an emergency summary suspension;~~
    ~~(4) Place restrictions on a certificate;~~
    ~~(5) Suspend a certificate for a period not to exceed three years,~~
    ~~(6) Revoke a certificate; or~~
    ~~(7) Any other action the hearing officer determines appropriate, including return or refund of service fees to a harmed person or entity. This shall not include imposition of a fine.~~

(1) Determine no violation exists and dismiss the complaint with or without prejudice;
(2) 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 (H);
(3) Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules or this code section and order an emergency suspension;
(4) Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules, this code section 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 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) Order suspension of a certificate for a set period of time not to exceed three years with specified conditions for reinstatement;
(h) Revoke a certificate with specified conditions for reinstatement; or
(i) Any other action the hearing officer determines appropriate, including return or refund of service fees to a harmed person or entity. This shall not include imposition of a fine.

~~b. The hearing officer may resolve a violation by consent order or other negotiated settlement between the parties. This order or settlement may include any of the actions listed in subsection H(20)(a) of this code section.~~

~~c~~b. The hearing officer shall issue an order specifying in what manner and to what extent any failure or violation is found and any sanctions pursuant to this code section. Any disciplinary action shall have effect statewide. The clerk ~~of the superior court~~ shall, within ~~ten~~ five days of any such action, notify in writing ~~each clerk of the superior court and the program coordinator~~ division staff of the action taken and of any subsequent changes in the status of the individual's approval to serve process. If the hearing officer issues an emergency suspension of a certificate, the clerk shall immediately notify the presiding judges, clerks and division staff of the action.

21. Procedure after Suspension or Revocation.

a. Upon suspension or revocation of any certification, the presiding judge shall have notice promptly served on the certificate holder either in person or by certified mail, return receipt requested, addressed to the last address of record with the clerk ~~program coordinator~~. Notice by mail is complete upon deposit in the United States mail.

b. The presiding judge shall only issue certification to any person whose certification had previously been revoked under this code section after the expiration of one year from the date of revocation, and after the person again qualifies in accordance with the ~~applicable~~ reinstatement provisions of this code section.

22. Filing of Special Action ~~Judicial Review~~. Decisions of the presiding judge, hearing officer or other designee regarding certification, renewal of certification, or disciplinary action pursuant to this code section are final. Parties may seek judicial review through a petition for a special action within 35 days after entry of the final order of the hearing officer. The petition for special action shall be pursuant to the Arizona Rules of Procedure for Special Actions.

I. Reserved.

~~Section 7-204: Private Process Server~~
~~Appendix A~~
~~Code of Conduct~~

J. Code of Conduct

1. Preamble. The Arizona Supreme Court adopts the following Code of Conduct to apply to all private process servers pursuant to A.R.S. § 11-445~~(H)~~(I), the Arizona Rules of Court and this code section. The purpose of this Code of Conduct is to establish minimum standards for performance by private process servers and to ensure they conduct the service of process in a professional manner.

2. ~~Standard 1.~~ Rules and Applicable Laws. The private process server shall perform all services and discharge all obligations in accordance with current Arizona and federal law, Arizona Rules of Civil Procedure, administrative orders and this code section as adopted by the Arizona Supreme Court governing the certification of private process servers. ~~a.~~ The private process server shall promptly file an affidavit of service or certificate of service or return the unserved documents.

3. ~~Standard 2.~~ Skills and Knowledge. The private process server shall demonstrate adequate skills and knowledge to perform the work of a private process server and shall seek training opportunities to maintain professional competency and growth.

   a. The private process server has an obligation to have knowledge and keep informed of current and applicable laws and court rules regarding the service of process.

   b. The private process server ~~has a responsibility to~~ shall maintain a working knowledge of proper methods of service.

c. The private process server shall possess the necessary verbal and written communication skills sufficient to perform the private process server role.

d. The private process server shall manage service proficiently. Skills required include those necessary to perform the service, maintain records, and communicate with the client in a timely fashion.

e. The private process server shall keep the client reasonably informed about the status of the service and promptly comply with reasonable requests.

f. The process server shall ensure all affidavits and certificates prepared by the private process server are complete, accurate and understandable and are timely filed with the court.

4. ~~Standard 3.~~ Professionalism. The private process server shall exercise the highest degree of professionalism in all interactions with clients, the party located, and others they come in contact with during the service. The private process server shall utilize professional judgment and discretion at all times.

a. The private process server shall handle all legal documents with care and maintain required records in a professional manner.

b. The private process server may act as a mentor to assist an inexperienced certified private process server for the purpose of increasing skill level and successful service of process.

c. The private process server shall ~~abstain from providing or offering~~ not provide or offer to provide legal advice.

d. The private process server shall not violate any rules adopted by the Arizona Supreme Court or conduct themselves in a manner that would reflect adversely on the judiciary, the courts, or other agencies involved in the administration of justice.

e. The private process server shall respect the confidentiality of information and shall preserve the clients' confidences; this duty outlasts the employment of the private process server.

f. The private process server shall maintain a professional appearance at all times.

g. The private process server shall be courteous and polite in all dealings and shall ~~abstain from using~~ not use profanity or vulgarity in contact with others.

h. The private process server shall never attempt to decide the merits of a lawsuit. The private process server shall explain the general nature of the served papers but shall

never engage in any unnecessary discussions regarding the action being served, with the persons receiving service. ~~It is only necessary for the private process server to explain the general nature of the served papers~~.

i. The process server may provide general legal information to a client and persons receiving service but shall not represent they are authorized to practice law in this state, nor shall the process server provide any kind of legal advice, opinion or recommendation about possible legal rights, remedies, defenses, options or strategies.

~~i~~j. The private process server shall know the protocol for service of process in a court building before proceeding with service and shall take appropriate steps to avoid impairing security or creating a security issue in a court building.

k. The private process server shall only serve the legal documents and papers included in the civil action for which the process server has been retained to serve process. No additional papers, advertisements or brochures are authorized to be included in the service of process.

5. ~~Standard 4.~~ Ethics. The private process server shall perform services in a manner consistent with legal and ethical standards.

a. The private process server, having located the sought-after party or persons receiving process for those persons intended for service, shall perform the service of process in a professional manner, utilizing sound judgment and avoid rudeness and unprofessional conduct.

b. The private process server shall present service in a nonjudgmental manner.

c. The private process server shall not misrepresent the private process server's qualifications, fees, or any other information relating to the role of the private process server.

d. The private process server shall not utilize certification in any manner to gain access to information or services for purposes other than those of the Private Process Server Program.

e. The private process server shall maintain the best interests of the client by maintaining a high standard of work and reporting to a client the full facts determined as a result of the work and effort expended whether they are advantageous or detrimental to the client.

6. Candor.

a. A private process server shall not knowingly:

(1) Falsify or misrepresent the facts surrounding the delivery of legal process to any person or entity;
(2) Make a false statement of material fact or law to a tribunal; or
(3) Fail to disclose a material fact to a tribunal, except as required by applicable law.

b. A private process server shall notify the presiding judge within ten days of a misdemeanor or felony conviction. The private process server shall provide this notice to the presiding judge in the county of certification of the process server.

c. A certified private process server may not wear a uniform, use a title, insignia, badge or identification card or make any statement that would lead a person to believe the certificate holder is an employee of a federal government, state government or any political subdivision of a state government unless the certificate holder is so authorized by proper authorities. No badge of any type may be used, shown or offered as identification in conjunction with the identification card or independently.

K. Reserved.

L. Continuing Education Policies

1. Purpose.

a. Service of process is integrally related to the prompt, effective and impartial operation of the judicial system. Private process servers are required to demonstrate a basic level of competency to become certified and practice in Arizona. Ongoing, continuing education (CE) is one means to ensure a certified process server maintains continuing competence as a process server after certification is obtained. It also provides opportunities for process servers to keep abreast of changes relating to the service of process, the law, and the Arizona judicial system.

b. These continuing education policies are intended to provide direction to certified private process servers, and to the presiding judges and clerks who administer the Private Process Server Program in each county; to ensure compliance with this code section regarding continuing education credits, and to provide for equitable statewide application and enforcement of the continuing education requirements.

2. Applicability. Pursuant to subsection (F), all certified private process servers shall complete at least ten hours of approved continuing education every twelve months in an area relevant to the work of a certified private process server. The private process server shall submit documentation of completion of the continuing education in an approved format with the application for renewal of certification. Pursuant to subsection G, a renewal period is for three years from the date of issuance of the certificate.

3. Responsibilities of Certified Private Process Servers.

a. It is the responsibility of each certified private process server to ensure compliance with the CE requirements, maintain documentation of completion of CE and to submit this documentation with the renewal application.

b. Upon request, each certified private process server shall provide any additional information required by the presiding judge when the judge is reviewing the renewal application and CE compliance and documentation.

c. If an activity has not been pre-approved, the rejection of any activity completed by a private process server and submitted with the application for renewal does not in any way diminish the responsibility of the process server to comply with the CE requirement.

4. Authorized Continuing Education Activities

a. CE activity shall address the areas of proficiency, competency, and performance of, and impart knowledge and understanding of the service of process, the Arizona judiciary and the legal process, and increase the participants' understanding of the responsibilities of a certified private process server and the process server's impact on the judicial process. Acceptable topics for CE activities include:

(1) Ethics for private process servers and court employees, including cooperation with lawyers, judges and fellow private process servers, professional attire, courtesy and impartiality to all litigants, information vs. legal advice and public relations;
(2) The Arizona court system, including the state and federal constitution, branches of government**,** Arizona court jurisdiction and responsibilities, Arizona tribal court system, resource materials including Arizona Revised Statutes, Arizona Rules of Court, case law, and administrative orders; and current issues in the Arizona court system; and
(3) Role and responsibilities of the certified private process server including this code section.

b. Persons developing and presenting CE activities shall have expertise in the curriculum, knowledge of adult education principles, and the ability to prepare and present educational material effectively. The education faculty presenting a CE activity should consist primarily of individuals with experience and expertise in the service of process, legal and judicial community; faculty from other disciplines is permissible when their expertise will contribute to the goals of a specific program. The CE activity shall specify for whom the program is primarily designed, the course objectives, course content and teaching methods. All CE activity shall be conducted in an organized setting free from distractions.

c. Pre-Approved Activities. Subject to the conditions specified in this policy, programs, seminars and courses of study offered or approved by the following entities are pre-approved and accredited:

(1) Arizona Private Process Servers Association (APPSA);
(2) Arizona Supreme Court Committee on Judicial Education and Training (COJET);
(3) United States Private Process Servers Association (USCRA);
(4) Arizona Courts Association (ACA); and
(5) National Association of Court Management (NACM).

d. Sponsoring Entities. Unless a CE activity has been pre-approved, entities wishing to administer a CE activity shall submit the proposed CE activity on the approved form to the division staff of the Arizona Supreme Court, Administrative Office of the Courts (AOC), for consideration prior to conducting the activity. Applications submitted by a sponsoring entity after the CE activity has been completed or conducted will be rejected.

(1) At a minimum, the proposal shall meet all requirements of this policy and shall include the following:
   (a) location, date and time of the proposed activity, with an agenda that identifies the time allocated for each topic and the time allocated for breaks and other activities that do not qualify for CE credit;
   (b) proposed audience;
   (c) course content, objectives, teaching methods and the evaluation method;
   (d) names and qualifications of the faculty;
   (e) written materials for the participants (a copy of the materials shall be included with the proposal), and
   (f) number of CE credits the sponsoring entity is recommending the AOC grant for completion of the activity.
(2) In addition, the proposal shall include a statement the sponsor agrees to assume responsibility for verifying attendance of the participants; will provide a certificate of attendance for each participant who successfully completes the activity and that upon request of the AOC, will provide any additional information requested to assist the AOC in evaluating whether to approve the activity or to ensure compliance with this policy.

e. Serving as Faculty. CE credit may be granted for serving as faculty, an instructor, speaker or panel member of an approved CE seminar directly related to the service of process. CE credit will be granted for the actual presentation time, plus actual preparation time up to two hours for each hour of presentation time. A maximum of five hours of CE credit will be granted for serving as faculty in any renewal period and a private process server may not receive credit for presenting a program repeatedly throughout the renewal period. A private process server may receive CE credit for actual presentation time for duplicate programs presented in subsequent renewals periods; but

will not be granted CE credit for preparation time for those programs.

f. Authoring or Coauthoring Articles. CE credit may be granted for authoring or coauthoring an article directly related to the service of process, if the article is published in a state or nationally recognized professional journal relating to the service of process and if the article is a minimum of one thousand words in length. A maximum of one hour of CE credit may be earned for authoring an article or articles in any one renewal period. Credit shall not be granted for the same article published in more than one publication or republished in the same publication in later editions.

g. University, College and Other Educational Institution Courses. A certified private process server may receive CE credit for a course provided by a university, college, or other educational institution if the private process server successfully completes the course with a grade of "C" or better or a "pass" on a pass/fail system. The private process server may receive CE credit upon documentation the course is relevant to the service of process. If the course is approved, credit will be awarded by multiplying the number of credit hours awarded by the educational institution by two, however, the maximum total of CE credits for completion of courses pursuant to this subsection shall not exceed 50 percent of the total number of CE hours required for the renewal period.

h. Minimum Time. Each CE activity shall consist of at least 30 minutes of "actual clock time" spent by a registrant in actual attendance at and completion of an approved CE activity. "Actual clock time" is the total hours attended, minus the time spent for introductory remarks, breaks, meals and business meetings. After completion of the initial 30 minutes of CE activity, credit may be given in fifteen minute increments. A process server may not use additional earned CE credits for subsequent renewal periods.

i. Maximum Credit. Unless a CE activity is directly related to the private process server profession, a private process server may not receive more than 50 per cent of the credit requirement for the renewal period through one activity.

j. Conferences. CE credit may be requested for attendance at a conference relevant to the work of a process server. A process server may receive 100 per cent of the CE credits for attendance at the conference, if the conference is directly related to the work of a process server. The process server must provide documentation of the specific sessions of the conference attended, with documentation of the hours for each session of the conference the process server attended. Credit will not be granted for attendance at general sessions of the conference.

k. Repeat of an Activity. Generally, credit will not be granted for process servers who repeat an activity within the same renewal period. Exceptions maybe granted if it is determined the activity is directly related to the work of a process server profession and duplication of the continuing education activity will enhance the process server's knowledge, skill and competency.

l. Documentation of Attendance or Completion. When attending or completing a CE activity, each process server shall obtain documentation of attendance or completion from the sponsoring entity. At a minimum, this documentation shall include the:

(1) name of the sponsor;
(2) name of the participant;
(3) topic of the subject matter;

(4) number of hours actually attended or the number of credit hours awarded by the sponsoring entity;
(5) date and place of the program;
(6) signature of the sponsor, or the documentation shall be an official document of the sponsoring entity; for example, a college grade report, etc.,
(7) signature of the process server, either in the space specifically provided on the form for this purpose, or the process server may sign across the documentation (for example, the college grade report) to indicate attendance and completion at the activity, and
(8) if the CE activity comprises eight or more hours of credit within one day, the documentation shall include an agenda that specifies the time allocated to each topic and the time for breaks and a lunch break.

m. A process server shall not request and credit shall not be granted if the process server attends part, but not all, of the provided activity. Notwithstanding the signature of the sponsoring entity regarding the CE credits for an activity, it is the responsibility of the process server to accurately calculate the number of hours attended, subtracting out any time for general introductions and other activities that do not qualify for CE credit.

n. Process servers requesting CE credit for self study shall submit documentation of completion on an approved form.

5. Non-Qualifying Activities. The following activities, regardless of whether or not the activity is approved for COJET credit, shall not qualify for CE credit for certified private process servers:

a. Completion of the examination required for initial certification;

b. Attendance or participation at professional or association business meetings, general sessions, elections, policymaking sessions or program orientation;

c. Serving on committees or councils or as officers in a professional organization, and

d. Activities completed as required by the presiding judge as part of a disciplinary action.

6. Decision Regarding Continuing Education Credits.

a. Upon a review of an application for renewal of certification and the required accompanying CE documentation, the presiding judge may:

(1) Approve the CE credit;
(2) Approve part but not all of the requested CE credit;

(3) Require additional information from the requester before making a decision; or
(4) Deny the CE credit.

b. The private process server shall be notified of the decision regarding the CE credit.

7. Compliance and Non-Compliance.

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a. An applicant for renewal of certification may be requested to supply additional information to verify compliance with the CE requirements. If the applicant fails to provide the requested information, the presiding judge may automatically deny the CE credit.

b. Pursuant to subsection (H)(l); a certified private process server who fails to meet the CE requirement, falsifies CE documents, willfully misrepresents CE activities and attendance at CE activities or attempts to circumvent the CE requirement by submitting an initial application for certification within twelve months of the expiration of the original certificate, is subject to denial of renewal of certification, disciplinary action, or both.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2012	_X_ Formal Action/Request __ Information Only __ Other	ACJA proposed changes to § 7-205 (Defensive Driving Program)

FROM:
Anne Hunter, Manager, Certification and Licensing Division, Administrative Office of the Courts

DISCUSSION:
The Arizona Code of Judicial Administration § 7-205: Defensive Driving Program contains provisions regulating defensive driving schools and instructors including certification requirements, codes of conduct, fee schedules, and continuing education policies. The proposed amendments establish guidelines for judges to use when considering a request for a law enforcement officer to be certified as a defensive driving instructor in ACJA § 7-205 (E)(2)(g)(1 and 2). The proposed amendment also establishes advertising restrictions including the use of the Arizona Supreme Court logo in ACJA § 7-205 (J)(1)(e) and (J)(1)(b)(4), adds language clarifying the process for positively identifying students enrolled in an on-line class in ACJA § 7-205 (E)(1)(m) and adds language clarifying the appropriate appearance and format of fee on schools' websites in ACJA § 7-205 (F)(l)(1) and (F)(5)(m). The proposed amendment also increases the reinstatement application fee from $100 to $1,000 for a defensive driving school in ACJA § 7-205 (K)(5)(d) and deletes the requirement that an instructor teach a minimum number of classes during a certification renewal cycle in ACJA § 7-205 (G)(3)(b). Finally, the amendment deletes the fee distinction in regard to the length of time from initial certification to renewal in ACJA § 7-205 (K).

Division staff has worked closely with the Defensive Driving Board, the Defensive Driving Board's Rules Subcommittee, and defensive driving school owners and instructors to develop the proposed amendment document. The proposed amendments to ACJA § 7-205 have been presented to the Limited Jurisdiction Court Committee and the Committee on Superior Court. In addition, the proposed amendments were circulated for public comment

and presented to the Defensive Driving Board. The Limited Jurisdiction Court Committee, the Committee on Superior Court, and the Defensive Driving Board voted to recommend that the Arizona Judicial Council adopt the code section proposals as written. See the attached table which contains comments received during the public comment period and the manner in which they were addressed.

RECOMMENDED COUNCIL ACTION:
Approve the proposal as presented.

2012
ACJA § 7-205 Proposed Amendments
Table of Comments Received

PARAGRAPH	COMMENT	RESPONSE
(E)(1)(m)	We feel the current student identification requirements are sufficient and should not be changed.	Change not incorporated.
(E)(2)(g)(1)	We'd like clarification regarding police officers serving as defensive driving instructors. Are police officers allowed to have both jobs simultaneously? It seems like a large potential conflict of interest.	Change not incorporated. Existing code allows an applicant for defensive driving instructor who is also currently serving as an active law enforcement officer to obtain a waiver from the presiding judge of the superior court in the county where the applicant is instructing. Applicants may not submit an application without a waiver.
(K)(5)(d)	The proposed increase in the reinstatement fee from $100 to $1,000 seems excessively steep. It may be necessary or prudent to increase this fee but not 10x.	Change not incorporated.

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TO: Members of the Judicial Council
FROM: Anne Segal, PhD

This memorandum is to strengthen understanding of the proposed amendments to the ACJA 7-205. Under the current standards, people referred to defensive driving school for traffic law violations follow a proscribed curriculum to reinforce knowledge of Arizona laws. Typically, attendance at a defense driving school is in lieu of fines for a civil traffic violation and avoids penalty points for the driver.

The proposal modifies the current defensive-driving curriculum delivery modalities for teen-age drivers. The amendments specify that traffic safety schools may seek for special certification to meet the learning needs of teen-age drivers.

In addition to being a justice court judge, I have my PhD in education. My dissertation research addressed identifying, describing and understanding the differences between educational needs of the child (pedagogy), young adult learner (teenagogy ™) and the mature adult learner (andagogy). Currently, the defensive driving schools present the materials in a manner that is appropriate for the mature adult learner (contextual), but fails to engage the young adult learner in educationally meaningful or applicable methodology.

My research studies indicated the young adult/teenager effectively engages in learning if there is discussion, visualization, and tactical reinforcement with a high quantity of personally applicable material. Peer pressure as well as peer endorsement of the concepts imbed the learning process.

The administrative amendments direct that within the time frames provided by ARS 28-3395, 60 minutes before or after the adult course, juveniles/young adults complete an appropriate content component. The regulations, as described in items (b) through (g) segments guide particular interactive learning mechanisms to reinforce topics and materials to engage and direct learning for the under-20 year old driver. To avoid the course being perceived as a video game, the regulations direct that the teenage course materials be only presented in a classroom.

In addition, the substantive information is also content and context-specific. For example, the administrative regulations direct instruction on reaction times from texting be illustrated by demonstrations. By illustration, students are instructed to text during class and try to catch a sponge -- visualizing the same reaction time needed to avoiding a collision. Illustrative learning is a key component. Instruction also focuses the consequences of strict liability for driving after drinking, the affect of fatigue when driving, decision-making when a friend is impaired .

The course material is not intended to replace the requirements for courses that enable a teenager to get a drivers license. The regulations reinforce and engage directive learning for the one-to-five-year drivers who now thinks that they are immortal because they have a license and got a traffic ticket.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 7: Administrative Office of the Courts
Chapter 2: Certification and Licensing Programs
§ 7-205: Defensive Driving

A. through D. [no changes]

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

1. Eligibility for Certification as a School. An applicant for certification as a defensive driving school shall:

   a. through i. [no changes]

   j. Provide articles of incorporation and letters of good standing from the Arizona Corporation Commission ~~or the Secretary of State, or if the applicant uses ADM, from comparable entities of the state where the business is incorporated or licensed~~.

   k. [no changes]

   l. File an administrative, operational and financial procedures manual detailing the applicant's processes for compliance with all Arizona statutes, ACJA § 7-201, this section and court or local rules. The administrative procedures manual shall include specific detail on the process an ADM school shall use to determine a positive identification of the individual enrolled in the defensive driving course, in compliance with subsection (F)(25)(d)(5)(b). This detail shall include whether or not the ADM school will utilize a third party process for verification of the user identity. Once approved, a school may not change the procedures until the school obtains approval from the board.

   m. through x. [no changes]

2. Eligibility for Certification as an Instructor. In addition to the requirements of ACJA § 7-201(E), for qualification as an instructor, an individual shall:

   a. Be at least 21 years old.

   b. Have a high school diploma or general equivalency diploma.

   c. Be a legal resident or citizen of the United States.

   d. Hold a valid driver license issued by the state of residence.

   e. Pass a certification examination testing the applicant's knowledge, skills and abilities as

an instructor.

f. Attach a certified current 60 month motor vehicle record to the application.

g. If the applicant is currently serving as an active law enforcement officer where any portion of their duties includes the authority to issue citations, the applicant may submit a completed application only if the applicant has obtained a waiver from the presiding judge of the superior court in the county where the applicant is instructing, allowing the officer to serve as an instructor.

(1) The applicant shall use the application for waiver form provided by the AOC and shall complete the following information on the form:

(a) Description of the officer's position and duties and if the officer's position includes the authority to issue citations, the number of citations the officer issued in the past twelve months;
(b) The jurisdiction where the officer intends to serve as a defensive driving instructor and whether that conflicts with the jurisdiction where the applicant serves as a law enforcement officer;
(c) An acknowledgement by the officer that the officer, if certified as an instructor, shall not refer to the officer's employment as a law enforcement officer when teaching a defensive driving class; and
(d) An acknowledgement by the officer that if the officer's responsibilities change such that the officer is routinely issuing citations the officer will notify the presiding judge within ten days.

(2) The presiding judge will consider all of the factors listed in subsection (E)(2)(g)(1) when considering the request for waiver and may grant or deny the request.

3. and 4. [no changes]

F. Role and Responsibilities of Certificate Holders. In addition to the requirements of ACJA § 7-201(F), each school shall:

1. through 4. [no changes]

5. Designate a principal who holds contracting authority for the school, with whom division staff can immediately make contact concerning any process or procedure of the school or court operation. The principal shall:

a. through j. [no changes]
k. Provide the total school fee to attend the school's course in any and all information or materials provided to students, including the school's website. This total fee must be inclusive of all fees and costs assessed and retained by the school for the student to

attend and complete the school's course. This total fee must be provided to the student prior to the student beginning the registration process and the school shall not require the student to complete registration steps before providing the total school fee. The school shall provide the total school fee information in a conspicuous area on the first page of the school's Arizona web site ~~or~~ and on published materials in a manner that is readily noticeable to the public and that is in accordance with the format specified by the AOC for all schools. A school shall inform the student that it will report the student's completion to the court having jurisdiction for no additional charge.

l. A defensive driving school shall post on the opening page or opening Arizona page of their internet website the following information:

(1) The total ~~cost to attend defensive driving for diversion~~ fees and charges in the format specified by the AOC, which shall include the following information:

~~(2)~~ (a) The school's total fee to attend reflecting all fees the school ~~may charge~~ charges for the student to attend and complete the course and processing of the completion to the court;

(b) The state fee;

(c) The state surcharge;

(d) A link to an additional webpage that identifies the court diversion fee for the court where the student received the citation or the specific diversion fee for each court;

(e) That the total cost for the student to attend the school is the total of the school fee, state fee, state surcharge and the court diversion fee;

~~(3) The court diversion fee;~~

~~(4) The State surcharge;~~

~~(5) The State fee;~~

(~~6~~2)The eligibility requirements to attend a defensive driving school;

(~~7~~3)The instruction that a student must complete the course 7 days prior to their arraignment date;

(~~8~~4)The violations eligible for defensive driving diversion or a link to the Supreme Court website listing eligible violations;

(~~9~~5)A list of the information required for course registration:

(a) Traffic citation;

(b) Government issued identification;

(c) Payment to be made prior to the start of class or program;

(~~10~~6)The class or program instructional times;

(~~11~~7)School refund policy; and

(~~12~~8)Link to the Supreme Court's website and toll-free telephone number to further assist the public.

m. Report the school fee up to two times each year, effective either on April 1st or October 1st , or on both dates. If a school charges a different fee, depending upon the municipality or the county in which the student was cited, the school shall report each fee, identifying the associated city or county. A school shall notify division staff by

September 1st for changes effective October 1st and by March 1st for changes effective April 1st regardless of whether the school changes the fee or retains the current fee, using the form provided by division staff. Any notice received from a school after the March 1st deadline will not take effect on April 1st but will be delayed until the next change date on October 1st. Any notice received from a school after the September 1st deadline will not take effect on October 1st but will be delayed until the next change date on April 1st.

n. If an ADM school, ensure the examination is included in the online course; and

o. In addition to the provisions contained in ACJA § 7-201(H)(6)(c), a certificate holder is subject to disciplinary action if the board finds the certificate holder has failed to cooperate with or supply information to any court or court staff by the time specified in any request.

6. through 31. [no changes]

32. Instructors. In addition to the requirements of ACJA § 7-201(F), an instructor may only teach defensive driving courses or contract to provide assistance under the auspices of a <u>certified</u> school.

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

1. Expiration Date. All school and instructor certificates shall expire at midnight, October 31st of odd numbered years.

2. Schools. Each school seeking renewal of certification shall:

   a. Pay the specified renewal fee in subsection (K)~~, calculated by division staff based on the total number of students completing a defensive driving course during the previous two state fiscal years~~;

   b. Pay any outstanding assessed ineligible completion processing fee;

   c. Provide division staff any changes in administrative, operational or financial procedures;

   d. Provide division staff any changes in curriculum content by electronic means only; and

   e. Provide division staff any changes in third party contracts.

3. Instructors. All instructors shall:

   a. Apply for renewal by submitting a certified motor vehicle record for the prior 24 months preceding the date the applicant files the renewal application with division staff.

~~b. Teach a minimum of eight classes in the 24 months of each renewal cycle. An instructor whose certificate expires less than one year from the effective date of certification shall teach on a pro-rated basis at the rate of at least one class for every two months the instructor has been certified. The employing or contracted school shall maintain records of classes taught for each employed or contracted instructor and shall provide the records on request of division staff or the board.~~

~~c~~b. Continuing education. During each renewal cycle all instructors shall attend a total of twelve hours of continuing education, six in each calendar year as required by the continuing education policies in subsection (L).

~~d~~c. Pass the examination for certification required pursuant to subsection (E)(2)(e) to qualify for renewal of certification.

~~4. Restricted Certification.~~

~~a. In order for a school to cover their scheduled defensive driving courses in the event of an emergency where an instructor is not available to teach a course, an owner or principal of a school may apply for, and the board may grant a restricted certificate under the following conditions:~~

~~(1) The owner or principal shall apply for the restricted certificate on a form approved by the board;~~
~~(2) The owner or principal holds a valid certificate as an instructor and meets all renewal requirements, except the requirement for the number of classes taught; and~~
~~(3) The owner or principal has not had a certificate that has been revoked or suspended.~~

~~b. To remain eligible to renew a restricted certificate, owners and principals shall complete all renewal requirements each renewal cycle except the number of defensive driving courses taught pursuant to subsection (G)(3).~~

~~5~~4. Denial of Renewal. In addition to the requirements in ACJA § 7-201(G), the following requirements apply:

a. The board may refuse to renew the certificate of any instructor who fails to meet the standards of this section and ACJA § 7-201 on two or more successive classroom monitoring sessions, completed more than 30 days apart.

b. If an instructor's certification lapses or is denied due to failure to meet renewal requirements, the instructor is not eligible to apply for subsequent certification for six months.

H. and I. [no changes]

J. Codes of Conduct.

1. Schools. This code of conduct is adopted by the supreme court to apply to all schools certified by the Arizona Supreme Court, pursuant to A.R.S. § 28-3395. The purpose of this code of conduct is to establish minimum standards of performance for schools.

   a. Curriculum. A school shall exercise extreme care and diligence and ensure all materials used in the instruction of defensive driving courses, whether in a classroom or in an ADM format, are in the public domain or original and not copied without the appropriate written permission.

      (1) A school shall make all reasonable efforts to secure accurate and current information in its presentations in defensive driving courses.
      (2) A school shall not use any curriculum material or teaching methods not approved by the board.

   b. Ethics. A school shall not operate in a manner reflecting adversely on the judiciary, board, courts, division staff or other agencies involved in the administration of justice including law enforcement agencies and attorneys.

      (1) A school shall maintain the confidentiality of all defensive driving student records, only transmit confidential information by U.S. Post, facsimile, or a secure electronic file, and shall not disclose defensive driving database information to any third party. A school may disclose information only upon presentation of reasonable evidence the individual seeking the information is the same individual who is the subject of the record. A school shall refer all third party requests for information to division staff.
      (2) A school shall not perform nor permit its employees, representatives or third party contractors to perform judicial functions or functions for court staff. School employees, representative or third party contractors shall not volunteer assistance to court staff in their official duties.
      (3) In addition to the provisions of ACJA § 7-201(H)(6)(c), a school and its staff shall comply with all requests for communications or information from court staff.
      (4) A school shall not use the Arizona Supreme Court logo or any other court logo on any of the school materials or in any way imply that the Arizona Supreme Court or any other Arizona court recommends or prefers a particular certified school. A certified school may provide information to the public that the school is certified by the Arizona Supreme Court, utilizing only the name associated with the active and valid certification of the school.

   c. Classrooms. A school shall maintain the appropriate decorum in the classroom to promote an atmosphere of learning for students. A school shall:

(1) Direct the instructors to require students to be punctual and attentive;
(2) Direct the instructors to prevent or control disruptions by students interfering with the conduct of the defensive driving course or distressing other students;
(3) Direct the instructors to prohibit students from sleeping or engaging in other activities that are not a part of the school's approved defensive driving course during the classroom instruction;
(4) Direct the instructors to forbid the use of electronic devises or laptop computers by students causing inattention or detractions from the learning of the student of other students in the defensive driving course; and
(5) Not use a facility for a classroom presentation which may create distractions prior, during or after the presentation.

d. Compliance. A school 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.

e. Advertising. A school shall not permit any erroneous, deceptive, or misleading advertising by omission, material misrepresentation, dishonesty, or fraud. A school shall not represent attendance at the school is free or that the school is recommended or preferred by the Arizona Supreme Court or any other Arizona court. A school shall not permit advertising during the presentation of its approved course. A school shall not provide any endorsements, rewards, or incentives to a student in order to:

(1) Receive reduced costs to attend the school's course by responding to an advertisement or taking a survey provided by the advertiser or school;
(2) Waive any costs or fees to attend the course;
(3) Misrepresent the costs to attend the course; or
(4) Misrepresent other schools' course offerings.

2. [no changes]

K. Fee Schedule.

1. Initial School Certification Fees for Two Year Period. Fee

(Fee is per each course delivery method utilized by a school)
~~a. Application year 2011:~~

~~(1) Certification expiring more than one year after application date $ 3000.00~~

~~(2) Certification expiring less than one year after application date $ 1500.00~~

~~b~~a. Application year 2012:

~~(1)~~ Initial Certification ~~expiring more than one year after application date~~ $ 4000.00

~~(2) Certification expiring less than one year after application date~~ ~~$ 2000.00~~

~~c~~b. Application year 2013 and after:

~~(1)~~ Initial Certification ~~expiring more than one year after application date~~ $ 5000.00

~~(2) Certification expiring less than one year after application date~~ ~~$ 2500.00~~

2. Initial Instructor Certification Fees for Two Year Period.

~~a.~~ Initial Certification ~~expiring more than one year after application date~~ $ 50.00

~~b. Certification expiring less than one year after application date~~ ~~$ 25.00~~

3. Examination Fees for Individuals.

a. Applicants for certification examination $ 50.00

b. Re-examinations $ 50.00

(For any applicant who did not pass the examination on the first attempt. The $50.00 fee applies to each re-examination.)

c. Re-registration for examination $ 50.00

(For any applicant who registers for an examination date and fails to appear at the designated site on the scheduled date and time.)

4. Renewal Certification Fees for Two Year Period.

a. School renewal

~~(1) Renewal year 2011:~~

~~Renewal fee for all schools~~ ~~$ 500.00~~

(~~2~~1) Renewal year 2013:

Renewal fee for all schools $ 750.00

(~~3~~2) Renewal year 2015 and after:

Renewal fee for all schools	$ 1000.00
b. Instructor renewal	$ 50.00
c. Late renewal fees	
(1) School	$ 50.00
(2) Instructor	$ 50.00
d. Delinquent continuing education	$ 50.00

5. Miscellaneous Fees.

a. Replacement of certificate or name change	$ 25.00
b. Public record request per page copy	$ 00.50
c. Certificate of correctness of copy of record	$ 18.00
d. Reinstatement application	~~$ 100.00~~ $ 1000.00
(Application for reinstatement to certification after suspension or revocation of certification.)	
e. Ineligible student completion processing fee (per occurrence)	$ 20.00
f. Implementation of an additional ~~modality~~ delivery method application fee for a currently certified school	$ 2000.00

L. [no changes]