

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ARIZONA CODE OF JUDICIAL)	Administrative Order
ADMINISTRATION § 7-203:)	<u>No. 2004 - 30</u>
CONFIDENTIAL INTERMEDIARY)	(Affecting Administrative
)	Order No. 2003-15)
)	

The Arizona State Legislature enacted changes to the statutes regulating the Confidential Intermediary Program during the 2003 legislative session. These changes were signed into law by Governor Napolitano as Laws 2003, Chapter 107.

The amendments to § 7-203 incorporate the statutory amendments made by the Arizona State Legislature and other technical formatting changes. In addition, § 7-203 is amended to provide that the name of a confidential intermediary and other personally identifying information is not posted on the judicial department Website upon a determination of countervailing interests of confidentiality, privacy or the best interest of the public. This amendment is necessary on an emergency basis to protect the safety of confidential intermediaries.

Pursuant to the Arizona Code of Judicial Administration, § 1-201 (E), the chief justice may adopt emergency administrative code proposals and technical changes in existing code sections by administrative order without prior distribution for comment and action by the Arizona Judicial Council.

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution and Arizona Revised Statutes § 8-134,

IT IS ORDERED that the Arizona Code of Judicial Administration, § 7-203 is amended by deleting the current text and replacing it with the attached.

Dated this _____ day of _____, 2004.

CHARLES E. JONES
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 7: Programs of the Administrative Office of the Courts

Chapter 2: Certification and Licensing

Section 7-203: Confidential Intermediary

A. Definitions. In this section the following definitions apply:

“Adoptee” means an individual adopted pursuant to A.R.S. §§ 8-102 and 8-132.

“Adult” means “a person eighteen years of age or older,” as provided by A.R.S. § 8-101(1).

“Agency” means “a person other than the division licensed by the division to place children for adoption, including an attorney or law firm,” as provided by A.R.S. § 8-101(2).

“A.R.S.” means the Arizona Revised Statutes.

“Article” means “Title 8, Article 1. General Provisions, Chapter 1” of the Arizona Revised Statutes.

“Child” means “any person under eighteen years of age,” as provided by A.R.S. § 8-101(4).

“Confidential intermediary” means a person who completes the requirements for certification as established by § 7-201, this section and A.R.S. § 8-134 and who possesses a valid confidential intermediary certificate issued by the supreme court. A confidential intermediary is authorized to access and inspect sealed court and other confidential records for the purpose of locating parties pursuant to A.R.S. § 8-134 to arrange a contact or share information between the individual who initiates a search and the person who is the subject of the search.

“Search” means the process where a confidential intermediary, upon the request of a birth parent, adoptive parent, adoptee or birth sibling of an adoptee, or upon a court order, reviews court and agency records to locate information regarding an adoptee, birth parent, adoptive parent or birth sibling of an adoptee.

B. Applicability. This code section governs the Confidential Intermediary Program, applies to every confidential intermediary in the state and is read in connection with § 7-201. In the event of a conflict between this section and § 7-201, the provisions of this section shall prevail. A.R.S. § 8-134(J) provides:

A person shall not act as a confidential intermediary unless the person possesses a confidential intermediary certificate issued by the supreme court. In order to be certified as a confidential intermediary a person shall meet and maintain the minimum standards prescribed by this section and the rules adopted by the supreme court.

C. Purpose. This section is intended to result in the effective administration of the Confidential Intermediary Program and in certification of confidential intermediaries who perform their responsibilities in a professional and competent manner, abiding by all applicable statutes and sections.

D. Administration.

1. Role and Responsibilities of the Supreme Court. A.R.S. § 8-134(I) provides that:

The Arizona supreme court shall administer the confidential intermediary program. The court shall adopt rules and procedures necessary to implement the program, including qualifications, required fees, minimum standards for certification, training and standards of conduct of confidential intermediaries, and shall establish the fees that may be charged by a confidential intermediary.

2. Role and Responsibilities of the Director. The role and responsibilities of the director are specified in § 7-201. In addition, the director shall appoint an advisory committee to meet no less than one time per year or as directed by the director for the purpose of making recommendations on matters pertaining to the Confidential Intermediary Program.

3. Role and Responsibilities of the Program Coordinator. The role and responsibilities of the program coordinator are specified in § 7-201. In addition:

a. The program coordinator shall maintain a list of confidential intermediaries, shall make the list available to the public upon request and post it to the judicial department Website. The minimum required certification list information for posting on the judicial department Website is the name of the certificate holder. The applicant may identify, on the applicant application or application addendum, additional information, including the address, telephone number and e-mail address of the certificate holder, for posting to the judicial department Website.

b. The program coordinator may not post, or may remove, the name and other information of a confidential intermediary posted on the judicial department website upon a determination of countervailing interests of confidentiality, privacy or the best interests of the public.

c. The program coordinator may charge for the costs of providing copies of the certification list or any other public records of the program. The program coordinator shall not charge a confidential intermediary for a copy of the list

4. Fund. The program coordinator shall deposit all collected fees in the Confidential Intermediary and Fiduciary Fund, in accordance with A.R.S. §§ 8-135 (A), 12-284.03(8), 14-

5651(A), and 36-342(B). A.R.S. § 8-135(A) provides that: “The supreme court shall administer the fund subject to legislative appropriation.”

E. Initial Certification.

1. Application for Initial Certification. The procedures for application for initial certification are specified in § 7-201.
2. Qualifications for Initial Certification. An applicant for certification shall meet the following criteria to qualify for application for certification:
 - a. 21 years of age or more;
 - b. A citizen of the United States or legal resident;
 - c. Comply with all requirements for application for initial certification pursuant to § 7-201: and this section;
 - d. Provide a full set of fingerprints, pursuant to § 7-201 and A.R.S. § 8-134(K). A.R.S. § 8-134(K) provides: “In carrying out the provisions of this section the supreme court shall require applicants for a confidential intermediary certificate to furnish fingerprints and the supreme court shall obtain criminal history record information pursuant to section 41-1750;”
 - e. Pay all applicable fees outlined in Appendix B, the Confidential Intermediary Program Fee Schedule adopted by the supreme court;
 - f. Successfully complete the initial training requirements pursuant to subsection E(3);
 - g. Pass the examination testing the knowledge of the applicant as a confidential intermediary pursuant to subsection E(4);
 - h. Agree to abide by the standards of conduct in Appendix A as adopted by the supreme court. Violations of the standards of conduct may be used as evidence of a violation of § 7-201 and § 7-203; and
 - i. Agree to comply with the Arizona Revised Statutes, Arizona Rules of Court, Arizona Code of Judicial Administration (ACJA) and administrative orders adopted by the supreme court governing confidential intermediaries and the laws of other states if applicable.
3. Initial Training. The procedures for the initial training are specified in § 7-201. In addition:
 - a. The program coordinator shall provide initial training for confidential intermediary

applicants no less than one time per year. The training shall consist of a minimum of twelve hours of instruction. All new applicants shall attend the entire initial training session.

- b. The program coordinator shall make the training available to persons not seeking certification upon application, payment of training fees, and class availability.
4. Examination. The procedures for the examination are specified in § 7-201. In addition:
 - a. Each individual applicant for initial certification shall personally take and pass, to the satisfaction of the director, an examination, reasonably testing the knowledge of an applicant as a confidential intermediary. The program coordinator shall administer the examination no less than one time per year in conjunction with the initial training. The program coordinator shall inform each applicant, in writing, of the grade of the completed examination and whether the grade is passing or failing.
 - b. An applicant who fails an examination for certification is entitled to one reexamination. If the applicant fails the reexamination, the applicant shall not receive another examination. The applicant may retake the initial training and examination and pay the applicable fees the following year after failing the examination and subsequent reexamination.
 5. Decision Regarding Certification. The procedures for decisions regarding certification are specified in § 7-201.
 6. Exemption from Certification. No certification is required of any agency licensed by the state or the Arizona Department of Economic Security pursuant to A.R.S. § 8-126(1).

F. Role and Responsibilities of Certificate Holders. The role and responsibilities of certificate holders are specified in § 7-201. The following provisions also apply to confidential intermediaries:

1. Standards of Conduct. Each confidential intermediary shall adhere to Appendix A, the standards of conduct adopted by the supreme court, pursuant to this section and A.R.S. § 8-134(I).
2. Identification. When accessing files related to a search, a confidential intermediary shall provide the valid photo identification issued by the Confidential Intermediary Program with the request for appointment form identifying the individual as the confidential intermediary appointed to the case.
3. Parties. A confidential intermediary shall provide services only to those parties who are eligible pursuant to Arizona law.

a. A.R.S. § 8-134(A) provides that:

A. Any of the following persons may use the services of a confidential intermediary who is listed with the court:

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

b. A.R.S. § 8-134 (G) and (H) provides that:

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

H. On receipt of a written statement from a physician that explains in detail why a serious health condition of the adoptee or a direct descendent of the adoptee should be communicated to the birth parent or biological sibling to enable the birth parent or biological sibling to make an informed medical decision, the court shall order the confidential intermediary program to appoint a

confidential intermediary. The confidential intermediary shall make a diligent effort to notify those individuals that the nonidentifying information is available and shall be provided on written request.

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

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

the adoptive parent withdraws the affidavit and grants permission in writing or the adoptee has filed an affidavit stating that the adoptee knows about the adoption and wishes to make contact with the birth parent.

- F. A birth parent who has not informed the parent's biological offspring of the existence of the adoptee may file an affidavit so stating with the court where the adoption took place. The affidavit may be withdrawn at any time by the birth parent. If an affidavit is a part of the court record, the confidential intermediary shall not make contact with the biological sibling unless the birth parent withdraws the affidavit and grants permission in writing or the biological sibling has filed an affidavit stating that the biological sibling knows about the adoptee and wishes to make contact with the adoptee.

G. Renewal of Certification. The requirements for renewal of certification are specified in § 7-201. In addition:

1. Expiration Date. Certification expires every three years from October 31, 1999. A certificate holder is responsible for meeting all requirements for renewal as described in § 7-201 and this subsection prior to expiration of the certificate.
2. Training. All confidential intermediaries shall complete at least eighteen hours of approved continuing education every three years to meet the training requirements for renewal.
3. Notification of Decision. The procedures for notification of the decision regarding renewal of certification are specified in § 7-201.

H. Complaints, Investigation, Disciplinary Action and Hearings. The procedures for complaints, investigation, disciplinary action and hearings are specified in § 7-201.

Adopted by Administrative Order 2001-12, effective January 11, 2001.

Amended by Administrative Order 2003-15, effective January 23, 2003.

Amended by Administrative Order 2004-30, effective May 19, 2004.

APPENDIX A
Confidential Intermediary Program
Standards of Conduct

Preamble. The following standards of conduct are hereby adopted by the Arizona Supreme Court to apply to all confidential intermediaries pursuant to A.R.S. § 8-134(I). It is the purpose of the supreme court to provide these standards of conduct to establish minimum standards for performance by confidential intermediaries and to ensure confidentiality of the search and consent process.

Standard 1. Confidentiality. The confidential intermediary shall keep paramount in all actions the importance and significance of confidentiality. The confidential intermediary shall exercise extreme care and diligence in respecting the privacy and confidentiality of all parties involved in the search.

- a. The confidential intermediary shall keep confidential all information obtained during the course of the search and shall use said confidential information only to arrange a contact or to share that information which is permitted by A.R.S. § 8-134 between the person who initiated the search and the person who is the subject of the search.
- b. The confidential intermediary shall review the court records to determine whether an affidavit has been filed by a party consenting to or blocking contact and act according to the wishes expressed by such an affidavit.
- c. The confidential intermediary shall perform the responsibilities of the confidential intermediary pursuant to Arizona laws relating to adoption including limitations on the release of information.
- d. The confidential intermediary shall maintain required records in a professional manner while protecting the confidentiality of information contained in the records.
- e. The confidential intermediary, having located the sought-after party, shall divulge only that information necessary to allow the client and located party to make an informed decision whether or not to consent to the release of identifying information. In order to meet the requirements of informed consent, the confidential intermediary shall share only the information necessary for the physical safety and protection of the parties and their families. The confidential intermediary shall present such information in a nonjudgmental manner.
- f. On a case by case basis, the confidential intermediary may consult with a confidential intermediary sharing only that information on a case which is necessary for the specific purpose of soliciting ideas or information that would assist the confidential intermediary in carrying out the search to arrange a contact. The discharge summary shall clearly designate the consulting confidential intermediary. All confidentiality restrictions apply to both confidential intermediaries.

- g. The confidential intermediary may act as a mentor to assist an inexperienced confidential intermediary. The inexperienced confidential intermediary and the mentoring confidential intermediary may share confidential information for the purpose of instruction for the result of an increased skill level and a successful search. The request for appointment form and the discharge summary shall clearly designate the mentoring confidential intermediary. All confidentiality restrictions apply to both confidential intermediaries.

Standard 2. Skills and Knowledge. The confidential intermediary shall demonstrate adequate skills and knowledge to perform the work of a confidential intermediary and shall fulfill ongoing training requirements as specified by the program to maintain professional growth.

- a. The confidential intermediary has an obligation to have knowledge and keep informed of all current and applicable laws regarding adoption issues.
- b. The confidential intermediary shall inform the parties of the availability of resources for support.
- c. The confidential intermediary has a responsibility to maintain a working knowledge of documents and information customarily contained in court and agency files.
- d. The confidential intermediary shall possess the necessary verbal and written communication skills sufficient to perform the confidential intermediary role, including an aptitude for communicating in person, by telephone and by correspondence.
- e. The confidential intermediary shall manage each case proficiently. Skills required include, but are not limited to, skills necessary to perform the search, make contact, maintain records and discharge the case in a timely fashion.
- f. The confidential intermediary shall keep the client reasonably informed about the status of the search and promptly comply with reasonable requests for information.
- g. The confidential intermediary shall prepare complete, accurate and understandable reports and discharge summaries.
- h. The confidential intermediary shall conduct each search demonstrating efforts appropriate to the case.
- i. The confidential intermediary shall perform a diligent and expedient search if the search is a court-ordered medical search.
- j. The confidential intermediary shall otherwise perform a search using proper diligence pursuant to the agreement between the confidential intermediary and client.

Standard 3. Fees and Expenses. The confidential intermediary shall charge only those fees and

expenses that are reasonable in amounts and necessarily incurred in order to conduct the search and provide services pursuant to Arizona law, the ACJA and administrative orders adopted by the supreme court.

- a. The confidential intermediary shall not charge more than the amounts permitted pursuant to Appendix C, the Client Fee Schedule adopted by the supreme court.
- b. The confidential intermediary shall return to the client all fees collected in advance but not earned.

Standard 4. Sensitivity and Professionalism. The confidential intermediary shall exercise the highest degree of sensitivity and professionalism in all interactions with clients, the party located and others with whom they come in contact during the search. This includes the ability to empathize with others, be discreet in dealing with confidential information and recognize the emotions of adoption members.

- a. The confidential intermediary shall strive to develop professional objectivity regarding biases, attitudes and beliefs about adoption and reunion issues.
- b. The confidential intermediary shall demonstrate the ability to work with individuals regardless of differing culture, ethnicity or lifestyle.
- c. The confidential intermediary shall not remove adoption case records from agency or court files or falsify or alter records.
- d. The confidential intermediary shall not use materials or employ methods that are not consistent with the role of a confidential intermediary and shall not use materials or employ methods for personal benefit or in ways that conflict with the goals and role of a confidential intermediary.
- e. The confidential intermediary shall not assume the role of a therapist or counselor when acting in the capacity of a confidential intermediary, even if otherwise qualified to do so, but may provide initial education and information. A confidential intermediary shall demonstrate understanding of how the confidential intermediary role differs from that of a counselor or an advocate.
- f. The confidential intermediary shall not provide or offer to provide legal advice in the role of a confidential intermediary.
- g. The confidential intermediary shall not violate any rules or policies regarding the Confidential Intermediary Program as established by the supreme court or conduct themselves in a manner that would reflect adversely on the judiciary, courts or other agencies involved in the administration of justice.

Standard 5. Ethics. The search and reunion of adopted individuals, adoptive parents and birth parents are highly charged emotionally. Because the primary sources of information about the unknown parties are confidential, the confidential intermediary is held to the highest standards of trust, impartiality and respect in the performance of services.

- a. The confidential intermediary shall perform services in a manner consistent with legal and ethical standards.
- b. The confidential intermediary shall not assume the role of an advocate or use coercion or undue influence to persuade any party to the search to take or not to take any action.
- c. The confidential intermediary shall be cognizant of personal limitations of knowledge and experience and may consult other experienced confidential intermediaries or the program staff about a case if § 7-201, § 7-203, administrative orders, Arizona statutes, standards of conduct or training manuals do not provide the guidance necessary to address difficult ethical issues. Nonetheless, the confidential intermediary is ultimately responsible for decisions made in regard to the case.
- d. The confidential intermediary shall avoid any conflict of interest or the appearance of a conflict of interest.
 - (1) The confidential intermediary shall not accept appointment to a case or continue on a case involving a relative or business associate or a personal friend where the relationship is such that the relative, business associate or personal friend may exert undue pressure on the confidential intermediary.
 - (2) The confidential intermediary shall not accept an appointment or continue on any case where the confidential intermediary cannot act in an objective manner or perform services as required.
 - (3) The confidential intermediary shall not accept an appointment or serve as a confidential intermediary for the purpose of taking advantage of any party to the search for personal or professional gain.
- e. The confidential intermediary shall avoid misrepresenting the purposes of the Confidential Intermediary Program, the confidential intermediary's qualifications, fees or any other information relating to the role of the confidential intermediary. The confidential intermediary shall avoid misrepresenting to any client or any party located any circumstances or information specific to a case.
- f. The confidential intermediary shall avoid utilizing certification in any manner to gain access to information or services for purposes other than those of the Confidential Intermediary Program.

Standard 7. Compliance. The confidential intermediary shall perform all services and discharge all obligations in accordance with current Arizona and federal laws, § 7-201, § 7-203 and administrative orders adopted by the supreme court governing the certification of confidential intermediaries.

APPENDIX B
Confidential Intermediary Program
Certification Fee Schedule

Pursuant to A.R.S. § 8-134(I), the Arizona Supreme Court shall administer the Confidential Intermediary Program. The court shall adopt rules and procedures necessary to implement the program, including qualifications, required and permissible fees.

A. Required Fees for Confidential Intermediary Certification

1. Individual Initial Certification Fees

a. Initial Certification

- | | |
|---|-----------|
| (1) For certification expiring <u>more</u> than one year after application date | \$ 100.00 |
| (2) For certification expiring <u>less</u> than one year after application date | \$ 50.00 |

b. Fingerprint Application Processing Fee
(Rate as set by Arizona law and subject to change)

c. Initial Training Session and Examination Fee \$ 150.00
(Includes one copy of the training manual and the examination and one reexamination, taken within 90 days, if applicable)

2. Individual Renewal Certification Fees

a. Renewal Certification Fee \$ 100.00

b. Renewal Training Session: \$ 75.00
(Includes one copy of the training materials)

3. Governmental Agency Initial Certification
(Applicable to all designated representatives and agency individuals seeking training or certification. The initial certification fee is waived, applicants are required to pay only the fee for the training and fingerprinting.)

a. Initial Training Session \$ 150.00
(Includes one copy of the training manual and examination and one reexamination, taken within 90 days, if applicable)

b. Fingerprint Application Processing Fee
(Rate as set by Arizona law and subject to change)

4. Governmental Agency Renewal Certification
(Applicable to all designated representatives and agency individuals seeking renewal training or renewal of certification. The renewal certification fee is waived, applicants are required to pay only the fee for the renewal training.)

a. Renewal Training Session \$ 75.00
(Includes one copy of the training materials)

B. Training Materials Available for Purchase Separately

- | | |
|-------------------------------|----------|
| 1. Initial Training Manual(s) | \$ 50.00 |
| 2. Renewal Training Manual(s) | \$ 25.00 |

APPENDIX C
Confidential Intermediary Program
Client Fee Schedule

Pursuant to A.R.S. § 8-134(I), the Arizona Supreme Court shall administer the Confidential Intermediary Program. The court shall adopt rules and procedures necessary to implement the program, including required and permissible fees. A confidential intermediary may charge clients the fees listed in this appendix for adoption search related services.

A. Initial Appointment Fee. \$ 25.00

(This is a one time fee the confidential intermediary may charge and collect for services that result in a search appointment. Services are as follows: initial consultation related to services, processes and initial application with the Confidential Intermediary Program to establish the search appointment.)

B. Investigation/Research Hourly Rate. \$ 50.00

(Maximum rate allowable)

C. Bookkeeping/Travel Hourly Rate \$ 15.00

(Maximum rate allowable)

D. Direct Costs and Expenses Billable at Rates Incurred.

(Current State of Arizona mileage allowance as posted on the Arizona government's Website)