

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of:	)	
	)	
AMENDING ARIZONA CODE OF	)	Administrative Order
JUDICIAL ADMINISTRATION	)	No. 2021 - <u>140</u>
§ 7-204: PRIVATE PROCESS SERVER	)	(Affecting Administrative
	)	Order No. 2013-48)
	)	
	)	
	)	

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

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

IT IS ORDERED that the amendments to ACJA § 7-204 as indicated on the attached document are adopted. All other provisions of § 7-204 remain unchanged and in effect.

Dated this 25th day of August, 2021.

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ROBERT BRUTINEL  
Chief Justice

**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.** 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.

“Advisory letter” means written communication notifying a certificate holder that 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.

“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 resolving a certification or complaint matter, voluntarily signed by the applicant or certificate holder.

“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 that 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 charges” means 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 disciplinary 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).

“Government employee process 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 disciplinary 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).

“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 judge” means the presiding judge of the superior court in the county 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 that warrant 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 process server” means a person, certified pursuant to the requirements in A.R.S. § ~~11-445(I)~~ 12-3301, this code section, and any other applicable statute or rule. As defined by A.R.S. § ~~11-445(I)~~ 12-3301, a private process server:

[M]ay serve all process, writs, orders, pleadings or papers that are required or permitted by law to be served before, during or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable pursuant to section 11-441, subsection A, paragraphs 6 and 7, section 11-447 and section 11-448, 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~~ rule. A private process server is an officer of the court.

“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.

“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.

“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 process servers pursuant to A.R.S. § ~~11-445(F)~~ 12-3301 and the Arizona Rules of Civil Procedure. This code 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.

**C. Purpose.** For eligibility to act as a private process server in Arizona, a person shall obtain certification and comply with the requirements of A.R.S. § ~~11-445(F)~~ 12-3301, the Arizona Rules of Civil Procedure, administrative orders, and 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 that are required or permitted by law for service before, during, or independent of a court action, including all documents required or permitted for service by a sheriff or constable pursuant to section 11-441, subsection A, paragraphs 6 and 7, section 11-447 and section 11-448, 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 that capacity for any state court ~~of the state anywhere within the State Arizona.~~”

**D. Administration.**

1. Role and Responsibilities of the Supreme Court. Pursuant to A.R.S. § ~~11-445(F)~~ 12-3301 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.
2. - 5. [No Changes]

**E. Initial Certification.**

1. [No Changes]

2. 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).
  - 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. § ~~41-445(F)~~ 12-3301, a government employee shall submit a completed fingerprint card and pay the applicable fees pursuant to subsection E(2)(c)(3). 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 pursuant to subsection E(4)(a).
    - (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. Requirements for Initial Certification. An applicant shall:
    - (1) Provide a completed application for certification in an approved format obtained from and filed with the clerk in the applicant's county of residence. Beginning January 1, 2013, a non-Arizona resident may apply for certification in any county. To comply with A.R.S. § 41-1080, the applicant shall submit documentation of U.S. citizenship or alien status with the application.
    - (2) Pass an examination for initial certification, as prescribed in subsection E(3);
    - (3) Pursuant to A.R.S. § ~~41-445(F)~~ 12-3301:

[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~~ may 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 with readable fingerprints. The applicant shall pay all costs or fees attributable to any subsequent re-fingerprinting and resubmission of fingerprints due to unreadable prints. A law-enforcement agency shall perform the fingerprinting;
- (b) The clerk shall submit completed applicant fingerprints and the fees to the Arizona Department of Public Safety (ADPS). Pursuant to A.R.S. § ~~41-445(I)~~ 12-3301, “The department of public safety ~~is authorized to~~ may 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 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 shall refuse to accept the application;
- (4) Provide additional background information, upon the request of the presiding judge, clerk, or designee;
- (5) Pay all fees authorized by law to the clerk pursuant to A.R.S. § 12-284; and
- (6) Provide photographs of a number and in the format prescribed in policies adopted by the director.

3. [No Changes]

4. Decision Granting Certification.

- a. If the presiding judge is satisfied that an applicant meets the qualifications for certification, the clerk, upon order of the judge, shall promptly issue 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]pon approval of the court or presiding judge thereof, in the County where the applicant of the county in which the application is filed, be registered with the clerk~~ will register the person as a certified private process server, which will remain in effect unless and until such the certification is withdrawn by the court. The clerk ~~shall~~ must maintain a register for this purpose. ~~Such~~ A certified private process server ~~shall~~ will be entitled to serve in ~~such that~~ that capacity for any state court ~~of the state anywhere within the State Arizona.~~

b. - d. [No Changes]

5. Denial of Initial Certification. The presiding judge:

a. - e. [No Changes]

- 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.~~

(1) Day of the Event Excluded. Exclude the day of the act, event, or default that begins the period.

(2) Exclusions if the Deadline Is Less Than 11 Days. Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than 11 days.

(3) Last Day. Include the last day of the period unless it is a Saturday, Sunday, or legal holiday. When the last day is excluded, the period runs until the next day that is not a Saturday, Sunday, or legal holiday.

(4) Next Day. The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

## **F. Role and Responsibilities of Certificate Holders.**

1. [No Changes]
2. Conflict of Interest. Pursuant to Rule 4(d)(2), Arizona Rules of Civil Procedure, a ~~private process server~~ privately appointed person “~~shall~~ must not be a party, an attorney, or ~~the~~ an employee of an attorney in the action ~~whose~~ in which process is to be served.”
3. – 5. [No Changes]
6. Fees. The applicant shall pay all required fees for certification, examination, and renewal of certification. The clerk shall collect in advance these fees, which are non-refundable. Pursuant to A.R.S. § ~~11-445(I)~~ 12-3301, “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. - 8. [No Changes]

## **G. - I [No Changes]**

**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(I)~~ 12-3301, 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. - 6. [No Changes]

**K. - L. [No Changes]**