

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



FIDUCIARY  
INDIVIDUAL LICENSURE  
CANDIDATE STUDY GUIDE

Fiduciary Program  
1501 West Washington, Suite 104  
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# 1. INTRODUCTION

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

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

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

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

ACJA § 7-201 and § 7-202 do not provide for any waiver of the examination. All potential candidates for licensure must take and pass the examination in order to be eligible to apply for licensure.

**EXEMPTIONS FROM CERTIFICATION** Licensure is not required of:

- Persons or business entities who serve as guardians, conservators or personal representatives for no fees or compensation monetary or otherwise,
- Persons who are related to the decedent or incapacitated or protected person,
- Persons who are nominated in a will or by a power conferred in a will,
- Persons who are a devisee in a will,
- Persons who serve as guardian ad litem,
- Persons serving as a foreign personal representative in an ancillary probate administration pursuant to A.R.S. § 14-4205.
- Persons serving as foreign conservator in an ancillary probate administration pursuant to A.R.S. §§ 14-5431 and -5432, or,
- Financial institutions.

PURPOSE OF THIS  
HANDBOOK

The purpose of this handbook is to provide candidates with detailed information about the examination for licensure as a fiduciary. The handbook includes information about subject matter areas assessed by the examination, candidate responsibilities on the day of the examination, and notification of examination results.

## 2. APPLICATION POLICIES AND PROCEDURES

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ELIGIBILITY	All potential candidates for licensure must successfully complete the written knowledge examination, submit a completed application for licensure, including the application fee, and possess the education or experience as outlined in ACJA § 7-201 and § 7-202.
CONFIRMATION OF ELIGIBILITY	<p>Potential applicants for fiduciary licensure must possess and demonstrate one or more of the qualifications to sit for the exam illustrated by ACJA § 7-202 (E)(1)(b).</p> <p>Resources and instructions for registering to participate in the examination are available for candidate review on the Program website at <a href="https://www.azcourts.gov/cld/Fiduciary-Licensing-Program">https://www.azcourts.gov/cld/Fiduciary-Licensing-Program</a>.</p>
FEES	The fee for participating in the examination is \$100.00. If it becomes necessary for an applicant to retake the examination, the fee is \$100.00. If a candidate registers for the exam and fails to appear as scheduled, the candidate will be assessed a \$100.00 re-registration fee.
TESTING ACCOMMODATIONS	Requests for special accommodations in accordance with the Americans with Disabilities Act must be submitted to the Certification and Licensing Division with substantiating documentation three weeks before the scheduled exam.

### 3. OVERVIEW OF THE EXAMINATION

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TIME LIMITS	Candidates are allowed a total of three (3) hours to complete the examination. Candidates may wish to complete the multiple-choice questions in any order; however, candidates are responsible for managing their own time.
FORMAT	<p>The examination consists of 100 multiple-choice questions worth one point each. There is one correct answer for each question. There is no penalty for guessing; therefore, candidates should answer all of the questions.</p> <p>The multiple-choice questions cover subject matter areas related to the provision of fiduciary services (see Content Specifications, Section 4). The questions are designed to demonstrate candidates possess the basic knowledge, skills, and abilities to provide fiduciary services</p>
PASSING SCORE	<p>The passing score is the score that a candidate must achieve in order to pass the examination and qualify for licensure as a fiduciary in Arizona.</p> <p>The passing score for the examination is a score of 72 out of the possible 100 points. Scoring is not based on a candidate achieving a passing score in each of the content specification areas, but rather is reflective of the overall score on the examination.</p>

## 4. CONTENT SPECIFICATIONS

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**CONTENT AREAS** The content for the examination was developed by a focus group of fiduciaries from representative practice settings in January 2007. They evaluated the importance of major subject matter areas of practice, determined their relative importance to practice, and assigned a weight (percentage) to each area. For example, if the weight is 11%, there would be 11 questions on a 100-item examination. There are four content areas outlined in the content specifications:

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

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

## 5. SAMPLE QUESTIONS

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

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

*ANSWERS: B, B, D, A*

## 6. EXAMINATION POLICIES AND PROCEDURES

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EXAMINATION SECURITY	<p>Candidates cannot receive any unauthorized assistance during the examination, including but not limited to any of the following:</p> <ul style="list-style-type: none"><li>• Impersonating another person in order to take the examination on that person's behalf;</li><li>• Communicating examination content to any person (during or after the examination);</li><li>• Removing examination materials from the examination room;</li><li>• Having in one's possession books, equipment, notes, written or printed materials, data, other than the examination materials distributed;</li><li>• Reproducing examination materials or providing notes of examination content to any persons other than the examination staff; and,</li><li>• Obstructing or subverting the administration of the examination.</li></ul> <p>Any candidate who violates examination security policies is subject to denial of licensure pursuant to ACJA §§ 7-201 and 7-202.</p>
ARRIVAL AT THE EXAMINATION	<p>On the day of the examination, the candidate must arrive at the designated examination site no later than the established registration time.</p>
TARDINESS	<p>An examination will not be disrupted to accommodate late arrivals. If a candidate reports late, the candidate will not be permitted to take the examination and will be required to pay prescribed fees for later participation.</p>
REGISTRATION	<p>The candidate <u>must</u> report to the registration area and present photographic identification (e.g., state-issued driver's license, military-issued identification or government-issued passport). The candidate will not be permitted to take the examination if they have not pre-registered and/or if they do not have the required photographic identification.</p> <p>At the time of the examination, all candidates will be required to sign an acknowledgement of the examination security policies and a non-disclosure agreement.</p>
NO SHOW POLICY	<p>If a candidate fails to show up for the examination, the candidate must re-register for the examination and pay the applicable fees.</p>
MATERIALS TO BRING	<p>Other than photographic identification, you will be provided with all material necessary to participate in the examination process.</p>

PROHIBITED  
MATERIALS

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

- Mobile devices or smartphones
- Smartwatches
- Candidate handbooks, technical reference books and dictionaries
- Any recording device
- Laptop computers

PERSONAL  
BELONGINGS

Food (beverage in a closed container is permitted

Candidates may keep keys, wallets, and purses at a designated location during the examination. Larger items (e.g., backpacks, briefcases, duffel bags, handbags, tote bags) and outerwear (e. g. coats, hats) CANNOT be brought into the examination.

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

If securing belongings results in the candidate being late for the examination, the candidate could be required to take the examination within the remaining time or could not be permitted to take the examination, which would require paying examination fees for later participation.

CHECK-OUT  
PROCEDURE

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

DISRUPTIVE  
BEHAVIOR

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

LEAVING THE  
ROOM DURING  
THE  
EXAMINATION

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

## 7. EXAMINATION RESULTS

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### NOTIFICATION OF RESULTS

Examination results will be sent to each candidate at the contact information on file with the program within thirty (30) days of completion of the examination. Examination results will NOT be released to third parties.

### RE- EXAMINATION

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

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

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

## 8. REFERENCES

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The following list of references provides a complete and comprehensive list of references related to the examination. It is expected for all applicants and certificate holders to have knowledge and understanding of these laws; not every statute, code or rule in this list is represented through an examination question. All cited references refer to the version of the reference as of November 2022. Any amendments adopted to the references after November 2022 will not be included in the examination. Every reference you will need to be familiar with for the examination is linked below.

### **Arizona Code of Judicial Administration**

<b>ACJA § 7-201</b>	<b>General Requirements</b>
<a href="#">§ 7-201(D)</a>	Administration
<a href="#">§ 7-201(E)</a>	Initial Certification
<a href="#">§ 7-201(F)</a>	Role and Responsibilities of Certificate Holders
<a href="#">§ 7-201(G)</a>	Renewal of Certification
<a href="#">§ 7-201(H)</a>	Complaints, Investigations, Disciplinary Actions, Proceedings and Certification and Disciplinary Hearings
<b>ACJA § 7-202</b>	<b>Fiduciaries</b>
<a href="#">§ 7-202(A)</a>	Definitions
<a href="#">§ 7-202(E)</a>	Initial Certification
<a href="#">§ 7-202(G)</a>	Renewal of Certification
<a href="#">§ 7-202(H)</a>	Complaints, Investigations, Disciplinary Action Proceedings and Certification and Disciplinary Hearings
<a href="#">§ 7-202(J)</a>	Code of Conduct

### **Arizona Revised Statutes**

<a href="#">ARS § 14-1201</a>	Definitions
<a href="#">ARS § 14-1401</a>	Notice; method and time of giving
<a href="#">ARS § 14-1403</a>	Pleadings; when parties bound by others; notice
<a href="#">ARS § 14-1408</a>	Appointment of guardian ad litem
<a href="#">ARS § 14-2101</a>	Intestate estate; modification by will
<a href="#">ARS § 14-2105</a>	Unclaimed estate; passage to state
<a href="#">ARS § 14-2501</a>	Who may make a will
<a href="#">ARS § 14-2502</a>	Execution; witnessed wills; holographic wills
<a href="#">ARS § 14-2503</a>	Holographic will
<a href="#">ARS § 14-2505</a>	Witnesses; requirements
<a href="#">ARS § 14-2517</a>	Penalty clause for contest; restriction
<a href="#">ARS § 14-2602</a>	Passage of existing and after-acquired property by will

<a href="#"><u>ARS § 14-2606</u></a>	Right to specific devises; unpaid proceeds of sale; condemnation or insurance; sale by conservator or agent
<a href="#"><u>ARS § 14-2901</u></a>	Nonvested property interest; general power of appointment; validity; exception
<a href="#"><u>ARS § 14-3101</u></a>	Devolution of estate at death; administration on deaths of husband and wife
<a href="#"><u>ARS § 14-3102</u></a>	Necessity of statement or order of probate for will; exception
<a href="#"><u>ARS § 14-3201</u></a>	Venue for first and subsequent estate proceedings; location of property
<a href="#"><u>ARS § 14-3203</u></a>	Priority among persons seeking appointment as personal representative
<a href="#"><u>ARS § 14-3403</u></a>	Formal testacy proceeding; notice of hearing on petition
<a href="#"><u>ARS § 14-3706</u></a>	Duty of personal representative; inventory and appraisement
<a href="#"><u>ARS § 14-3801</u></a>	Notice to creditors
<a href="#"><u>ARS § 14-3805</u></a>	Priority of claims
<a href="#"><u>ARS § 14-3933</u></a>	Closing estates; statement of personal representative
<a href="#"><u>ARS § 14-3971</u></a>	Collection of personal property by affidavit; ownership of vehicles; affidavit of succession to real property
<a href="#"><u>ARS § 14-5303</u></a>	Procedure for court appointment of a guardian of an alleged incapacitated person
<a href="#"><u>ARS § 14-5304</u></a>	Findings; order of appointment; limitations; filing
<a href="#"><u>ARS § 14-5307</u></a>	Removal or resignation of guardian; termination of incapacity
<a href="#"><u>ARS § 14-5309</u></a>	Notices in guardianship proceedings
<a href="#"><u>ARS § 14-5310.01</u></a>	Adult protective services workers; special visitation warrants
<a href="#"><u>ARS § 14-5311</u></a>	Who may be guardian; priorities
<a href="#"><u>ARS § 14-5312</u></a>	General powers and duties of guardian
<a href="#"><u>ARS § 14-5312.01</u></a>	Inpatient treatment; rights and duties of ward and guardian
<a href="#"><u>ARS § 14-5315</u></a>	Guardian reports; contents
<a href="#"><u>ARS § 14-5401</u></a>	Protective proceedings
<a href="#"><u>ARS § 14-5403</u></a>	Venue
<a href="#"><u>ARS § 14-5405</u></a>	Notice in conservatorship proceedings
<a href="#"><u>ARS § 14-5408</u></a>	Permissible court orders
<a href="#"><u>ARS § 14-5410</u></a>	Who may be appointed conservator; priorities
<a href="#"><u>ARS § 14-5414</u></a>	Compensation and expenses
<a href="#"><u>ARS § 14-5418</u></a>	Inventory and records
<a href="#"><u>ARS § 14-5419</u></a>	Accounts
<a href="#"><u>ARS § 14-5421</u></a>	Recording of conservator's letters
<a href="#"><u>ARS § 14-5424</u></a>	Powers of conservator in administration
<a href="#"><u>ARS § 14-5425</u></a>	Distributive duties and powers of conservator
<a href="#"><u>ARS § 14-5428</u></a>	Claims against protected person; enforcement
<a href="#"><u>ARS § 14-5501</u></a>	Durable power of attorney; creation; validity
<a href="#"><u>ARS § 14-5604</u></a>	Claim against estate for expenses
<a href="#"><u>ARS § 14-5605</u></a>	Letter testamentary or of administration not required; statement to

	be filed; powers and duties
<a href="#"><u>ARS § 14-5606</u></a>	Additional powers and duties of the public fiduciary
<a href="#"><u>ARS § 14-5651</u></a>	Fiduciaries; certification; qualifications; conduct; removal; exemption; definitions
<a href="#"><u>ARS § 14-10804</u></a>	Prudent administration
<a href="#"><u>ARS § 14-10901</u></a>	Prudent Investor Rule
<a href="#"><u>ARS § 46-454</u></a>	Duty to report abuse, neglect and exploitation of vulnerable adults, duty to make medical records available; violation; classification

### **Arizona Rules of Probate Procedure**

<a href="#"><u>Rule 13</u></a>	Probate Information Form and Notice of Change of Contact Information Form
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## 9. APPLICABLE ACJA, A.R.S & RULE SECTIONS

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**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 7: Administrative Office of the Courts**  
**Chapter 2: Certification and Licensing Programs**  
**Section 7-201: General Requirements**

### **D. Administration.**

1. Role and Responsibilities of the Supreme Court. Pursuant to A.R.S. § 8-134(I), § 8-543(A), § 14-5651(A), § 28-3395(B), § 32-4005(A) and Rule 31(a)(23), Rules of the Supreme Court, the supreme court is responsible for administering the confidential intermediary program, fiduciary program, defensive driving program, certified reporter program and legal document preparer program. The supreme court shall:
  - a. Adopt rules for the implementation and administration of all certification programs including minimum qualifications, certification and disciplinary processes and a code of conduct.
  - b. Establish and collect fees, costs and fines necessary for the implementation and enforcement of all certification programs.
  
2. Role and Responsibilities of the Director. The director as designated by the Az. Const. Art. 6 § 7:
  - a. Shall:
    - (1) Develop policies and procedures in conformity with this section and the applicable sections of ACJA including §§ 7-202, -203, -205, -206 and -208;
    - (2) Appoint and supervise all division staff;
    - (3) Approve or disapprove all budgetary matters;
    - (4) Ensure implementation of the applicable laws, this section and the applicable sections of the ACJA;
    - (5) Develop policies and procedures regarding review of credit reports;
    - (6) Develop policies and procedures governing any complaint initiated by the director; and
    - (7) Develop time frames for the processing of certification applications by division staff.
  - b. May:
    - (1) Appoint and develop administrative guidelines for ethics advisory committees to issue nonbinding ethical advisory opinions;

- (2) Direct division staff to conduct an investigation into alleged acts of misconduct or violations by a certificate holder pursuant to subsection (H)(1)(b);
- (3) Initiate a complaint pursuant to subsection (H)(1)(b)(4)(b); and
- (4) Pursuant to the applicable sections of the ACJA, administrative orders and A.R.S. §§ 28-3399 and 41-2401(D)(8), initiate a compliance audit of a certificate holder to determine if the certificate holder is in compliance with statutes, court rules, administrative orders, court orders, local rules, the ACJA and any other legal or ethical requirement relating to the certificate holder's profession or occupation. The following provisions apply to audits:
  - (a) Timeframes. The director shall develop timeframes and procedures for division staff conducting compliance audits.
  - (b) Confidentiality.
    - (i) Working papers associated with the compliance audit maintained by division staff are not public records and are not subject to disclosure, except to court staff in connection with their official duties, the attorney general, county attorney, public regulatory entities or law enforcement agencies.
    - (ii) Upon completion of an audit the final report issued to the affected party is a public record subject to public inspection.
  - (c) Subpoena. The director may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the audit.
  - (d) Referral. The director may refer the audited certificate holder to an applicable agency or division staff for investigation of alleged acts of misconduct or violations of the statutes, court rules, this section or the applicable sections of the ACJA. If the director refers the audited certificate holder to division staff for investigation of allegations of acts of misconduct or violations, the division staff shall process the complaint pursuant to subsection (H).
  - (e) Violations or Noncompliance. Wilful violation of or wilful noncompliance with an order of the director regarding the audit, or wilful noncompliance with a corrective action plan resulting from an audit, may result in an order directing the certificate holder to comply. The director may forward a copy of the order or report to the superior court and request the superior court issue an order to require the appearance of a person or business, compliance with the director's order, or both. The superior court may treat the failure to obey the order as contempt of court and may impose penalties as though the certificate holder had disobeyed an order issued by the superior court.

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

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

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

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

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

b. Division staff shall:

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

5. Role and Responsibilities of Professional and Occupational Boards.

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

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

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

c. Duties of the Board.

(1) The board shall:

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

(2) The board may:

- (a) Hold informal interviews of applicants regarding initial certification and issue subpoenas for witnesses and documentary evidence, pursuant to subsection (E)(1)(a)(10);
- (b) Hold informal interviews of certificate holders regarding renewal of certification and issue subpoenas for witnesses and documentary evidence, pursuant to subsection (G)(1)(b);
- (c) Request additional investigation of a complaint dismissed by the division director, pursuant to subsection (H)(2)(d)(2);
- (d) Hold formal interviews of certificate holders regarding disciplinary matters, whether any discipline is eventually imposed or not, and issue subpoenas for witnesses and documentary evidence, pursuant to subsection (H)(8); and
- (e) Make procedural determinations to consolidate or sever any discipline matter.

d. The board shall follow the policies and procedures in subsection (I).

e. Persons appointed by the supreme court to serve on boards are immune from civil liability for good faith conduct relating to their official duties.

6. Computation of Time. For the purposes of this section and the ACJA specific section, the computation of days pursuant to Rule 6(a), Rules of Civil Procedure is calculated as follows:

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

## **E. Initial Certification.**

1. Application for Initial Certification.

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

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

- shoulders only. The applicant shall ensure the photograph was taken within the last two years and clearly identifies the applicant. An application submitted without a photograph is deficient.
- d. **Fingerprinting.** If required pursuant to law, the applicant shall submit with the application, a full set of fingerprints, with the fee established by law, for the purpose of obtaining a state and federal criminal records check. An application submitted without a fingerprint card, if required by law, is deficient.
- (1) The applicant shall provide a readable and complete fingerprint card. The applicant shall pay any costs attributable to the original fingerprinting or subsequent re-fingerprinting due to unreadable fingerprints and any fees required for the submission or resubmission of fingerprints.
  - (2) If after two attempts, the FBI determines the fingerprints provided are not readable, the applicant shall submit a written statement, under oath, the applicant has not been arrested, charged, indicted, convicted of or pled guilty to any felony or misdemeanor, other than as disclosed on the application.
  - (3) Division staff shall submit completed applicant fingerprint cards and the applicable fees to the Arizona Department of Public Safety, pursuant to A.R.S. § 41-1750, Public Law 92-544 and subsection (D)(4)(b)(1).
- e. **Initial Training.** If required by the applicable section of the ACJA, an applicant shall attend and complete the initial training session. Division staff shall provide the applicant with a document signifying the applicant completed the training. If required by the applicable section of the ACJA, an applicant shall attend the entire training session for eligibility to sit for a certification examination.
- f. **Examination.** If required by the applicable section of the ACJA, an applicant shall take and pass the examination for initial certification. Specific examination requirements are located in subsection (E) of the applicable ACJA section. National examinations shall be at the time and place scheduled by the administering entity.
- (1) **Administration of the Initial Examination.** In administering the examination, division staff shall:
    - (a) Offer the examination on dates in conjunction with the initial training for certification, if initial training is required by the applicable section of the ACJA;
    - (b) Set a date and place for the examination;
    - (c) Promptly notify qualified applicants in writing they are permitted to sit for the examination, specifying the time and place of such examination;
    - (d) Publish in advance of the examination, content specifications for the examination and a study guide, as approved by the applicable board and make the specifications and study guide available to applicants;
    - (e) Announce, in advance of the examination, the passing score for the examination, as established by the applicable board. The passing score shall be consistent with the job analysis conducted at the direction of the board. An applicant shall pass with a final score on the examination meeting the guidelines established by the board;
    - (f) Use multiple versions of the examination and ensure no copies of the

- examination are released to applicants or the public;
- (g) Inform each applicant in writing as to whether the applicant passed or failed the examination and if the grade is failing, a reexamination is required to meet all qualifications for certification; and
  - (h) Make and keep an accurate record of each examination used at each administration of the examination and the score of each person taking the examination.
- (2) Administration of Reexaminations. Division staff shall allow an applicant who fails the first examination to:
- (a) Review the answer sheet and grade of the applicant, upon written request. The applicant shall conduct the review during business hours in the presence of division staff and the applicant shall not copy materials provided for review.
  - (b) Retake the examination two times under the following conditions:
    - (i) The applicant is not otherwise disqualified from retaking the examination;
    - (ii) The applicant sent a written request to retake the examination to division staff within 30 days of the date of the notice of the examination results;
    - (iii) The applicant files a new application and pays the applicable examination fee each time;
    - (iv) The applicant takes the second or third reexamination within 90 days of the date of the notice of the examination results indicating the applicant failed either the first or second examination; and
    - (v) An applicant who does not submit a written request to retake the examination within the 30 day time frame specified in subsection (E)(1)(f)(2)(b)(ii), may request an extension of time from the board upon a showing of good cause.
  - (c) An applicant taking and failing the examination three times, unless otherwise noted in the applicable ACJA section, shall not be permitted to take any subsequent examination unless granted permission by the board.
  - (d) Subsequent Examinations.
    - (i) Any applicant who was unsuccessful on the third attempt to pass the examination may request the board for permission to sit for a fourth examination. The applicant shall submit a written request to the board to sit for a fourth examination under the following conditions:
      - a) The applicant has filed a new application with division staff and paid the appropriate examination fee;
      - b) The applicant is not otherwise disqualified from taking the subsequent examination;
      - c) The applicant has provided documentation attached to the new application stating the additional study and preparation the applicant has made to qualify for a fourth examination; and
      - d) The applicant has provided documentation attached to the new application demonstrating the circumstances and reasons for believing the applicant now possesses the knowledge of the minimum competencies of the profession or occupation to pass the fourth examination.
        - (ii) If the board finds the applicant demonstrates additional study and preparation and the circumstances and reasons to believe the applicant now possesses the knowledge of the minimum

competencies of the profession or occupation, the board may, pursuant to subsection (D)(5)(c)(1)(c), approve the applicant's request to sit for the fourth examination. Division staff shall inform the applicant of the board's decision to allow the applicant to sit for the fourth examination within ten days of the board's decision. The notice shall state the earliest date for which the applicant may sit for the fourth examination.

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

## 2. Decision Regarding Certification.

- a. Notification of Certification. Upon the board's decision to issue a certificate, division staff shall promptly notify qualified applicants of certification in writing, pursuant to this section and the applicable section of the ACJA. Each qualified applicant shall receive a document, badge or card evidencing certification, stating the applicant's name, date of certification, certificate number and expiration date of the certification. Each certificate shall expire as provided in the applicable section of the ACJA. In addition, unless previously provided, each applicant granted certification shall receive a copy of this section and the applicable section of the ACJA, detailing the responsibilities of the certificate holder.

- b. Certificate Status. All certificates are valid until expired, surrendered, suspended or revoked.
- c. Denial of Initial Certification.
  - (1) The board shall deny certification of the applicant if the applicant does not meet the qualifications or eligibility requirements at the time of the application described in this section or the applicable section of the ACJA; or has not submitted a complete application with all deficiencies corrected, the applicable documents and fees.
  - (2) The board may deny certification of any applicant if one or more of the following is found:
    - (a) Material misrepresentation, omission, fraud, dishonesty, or corruption on the part of the applicant in the examination for certification;
    - (b) The applicant or an officer, director, partner, member, trustee, or manager of the applicant:
      - (i) Has committed material misrepresentation, omission, fraud, dishonesty, or corruption in the application form;
      - (ii) Has committed any act constituting material misrepresentation, omission, fraud, dishonesty or corruption in business or financial matters;
      - (iii) Has conduct showing the applicant or an officer, director, partner, member, trustee, or manager of the applicant is incompetent or a source of injury and loss to the public;
      - (iv) Has a conviction by final judgment of a felony, regardless of whether civil rights have been restored;
      - (v) Has a conviction by final judgment of a misdemeanor if the crime has a reasonable relationship to the practice of the certified profession or occupation, regardless of whether civil rights have been restored;
      - (vi) Has a denial, revocation, suspension or any disciplinary action of any professional or occupational license or certificate;
      - (vii) Has a censure, probation or any other disciplinary action of any professional or occupational license or certificate by other licensing or regulatory entities if the underlying conduct is relevant to the certification sought;
      - (viii) Has a termination, suspension, probation or any other disciplinary action regarding past employment if the underlying conduct is relevant to the certification sought;
      - (ix) Has been found civilly liable in an action involving misrepresentation, material omission, fraud, misappropriation, theft or conversion;
      - (x) Is currently on probation or parole;
      - (xi) Has violated any decision, order, or rule issued by a professional regulatory entity;
      - (xii) Has violated any order of a court, judicial officer, administrative tribunal, or the board;
      - (xiii) Has made a false or misleading statement or verification in support of an application for a certificate filed by another person;

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

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

### 3. Time Frames for Certification.

- a. The director shall develop time frames for the processing of certification applications by division staff, pursuant to subsection (D)(2)(a)(7).
- b. An applicant shall respond timely to requests for information from division staff pertaining to the applicant's application. Unless the applicant can show good cause as

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

appropriate abbreviation connected with this certification. No other person or business shall assume or use the title, designation or abbreviation or any other title, designation, sign or card, the use of which is reasonably likely to induce others to believe the person or business holds valid certification issued by the Arizona Supreme Court in the specified profession or occupation. The certificate holder shall not sell, transfer or assign its certification to any other entity.

6. Cease and Desist Order. The board, upon completion of an investigation or disciplinary proceeding, may issue a cease and desist order pursuant to subsection (H)(24)(a)(6)(g). A hearing officer or a superior court judge, upon petition by the board, may enter an order for an individual or business entity to immediately cease and desist conduct constituting engagement in the practice of the profession or occupation without the required certification.
7. Voluntary Surrender. A certificate holder in good standing may surrender their certificate to the board. However, the surrender of the certificate is not valid until accepted by the board. The board or division staff may require additional information reasonably necessary to determine if the certificate holder has violated any provision of the statutes, court rules and this section or the applicable section of the ACJA. The surrender does not prevent the commencement of subsequent discipline proceedings for any conduct of the surrendered certificate holder occurring prior to the surrender.
  - a. Division staff shall present the surrendered certificate to the board at the next available board meeting after receiving the surrender. Upon the board's acceptance of the voluntary surrender division staff shall designate the certificate of the certificate holder as a "surrendered certificate holder in good standing". Division staff shall notify the certificate holder in writing within ten days after the board's acceptance of the surrender.
  - b. The board shall not accept the surrender if there is a complaint pending against the certificate holder. However, this does not preclude the board from entering into a consent agreement to resolve the pending complaint pursuant to subsection (H)(24)(a)(6)(c) by terms including the voluntary surrender of the certificate.
  - c. The board shall, within 120 days of the receipt of the surrendered certificate by division staff either accept the surrender or, based upon the recommendations of division staff, institute disciplinary proceedings pursuant to subsection (H). If the board subsequently imposes a sanction pursuant to subsections (H)(24) and (H)(25) upon the certificate of the surrendered certificate holder, division staff shall change the status of the certificate holder from "surrendered certificate holder in good standing" to that of a person so disciplined.
8. Inactive Status.
  - a. A certificate holder may transfer to inactive status, upon written request to the board. Upon recommendation of division staff the board may accept the transfer of the certificate holder to inactive status and division staff shall note in the certification database the certificate holder is on inactive status, in good standing. The inactive

- certificate holder shall not engage in the practice of the profession or occupation of certification pro bono or for a fee or other compensation while on inactive status and shall not present themselves as a certificate holder.
- b. Upon application and payment of any applicable fee for reactivation of certification, required by the applicable section of the ACJA, the board may require the applicant to comply with the following:
- (1) Submit proof of compliance with the requirements for continuing education;
  - (2) Submit other proof required by the board to:
    - (a) Demonstrate the applicant possesses the skills necessary to practice in the profession or occupation;
    - (b) Demonstrate the applicant remains in compliance with the applicable ACJA sections; and
    - (c) Demonstrate compliance with other requirements for certification.
  - (3) If the applicant for reinstatement engaged in the profession or occupation in another jurisdiction during the time the certificate holder's certificate was inactive, the applicant shall submit all of the following:
    - (a) Proof of practice in the profession or occupation in the other jurisdiction;
    - (b) An affidavit affirming the applicant has not been disciplined in another jurisdiction; and
    - (c) An affidavit affirming the applicant is not subject to discipline or being investigated in another jurisdiction.
  - (4) If the applicant has been inactive for more than one year the board may require the applicant to sit for and pass the applicable examination.
- c. If the applicant meets the requirements of this subsection to the satisfaction of the board, the board shall return the inactive certificate holder to active status. Division staff shall change the status of the certificate holder from "inactive" to "active" and notify the certificate holder of the board's decision within ten days.
- d. A certificate holder shall only remain in an inactive status as specified by the applicable ACJA section.
9. Reinstatement after Suspension or Revocation. A certificate holder whose certificate was suspended or revoked by a final order of the board may apply for reinstatement under the following conditions:
- a. An applicant for reinstatement shall file a written application for reinstatement with division staff, accompanied by the appropriate fees and the following documents:
    - (1) The reinstatement form and a copy of the final order of suspension or revocation;
    - (2) A detailed description of the applicant's occupation and sources of income or earnings derived during the period between the filing of the final order by the disciplinary clerk and the date of application for reinstatement after suspension or an initial application for recertification;
    - (3) A statement of every civil or criminal action and a copy of the action, where the applicant was either plaintiff or defendant, since the submission of the last renewal

- application or, if no renewal application has been submitted, then since the initial application was submitted;
- (4) A list of all criminal or civil final judgments since the submission of the last renewal application, or if no renewal application has been submitted, then since the initial application was submitted;
  - (5) A list of all residences and business addresses since the submission of the last renewal application, or if no renewal application has been submitted, then since the initial application for certification and the date division staff receive the application for reinstatement;
  - (6) A statement of concise facts of how the applicant for reinstatement has maintained the minimum competencies and knowledge during the period of time from the date of the suspension order until the date division staff receives the reinstatement application;
  - (7) A statement of concise facts of how the applicant for recertification has maintained the minimum competencies and knowledge during the period of time from the date of the order revoking the applicant's certificate until the date division staff receive the application for certification;
  - (8) A statement of facts supporting reinstatement to the profession or occupation after suspension; or a statement of facts supporting certification again to the profession or occupation; and
  - (9) A statement of all facts demonstrating the applicant's rehabilitation during the period of time from the date of the board's order revoking the applicant's certificate or suspending the applicant's certificate, until the date division staff receive the application for reinstatement or initial certification.
- b. Division staff or the board may require additional information demonstrating the applicant meets the minimum competencies of the profession or occupation. The board may require the applicant sit for and pass the applicable examination in order to process the application or determine if the applicant meets the minimum competencies of the profession or occupation. The applicant has the burden of proof to demonstrate by clear and convincing evidence the applicant's rehabilitation, compliance with all discipline orders and rules and, the applicant meets the minimum competencies of the profession or occupation. An applicant denied reinstatement by the board has the right to a hearing pursuant to subsection (H)(12), except if the applicant fails to provide the information within the requested time frame. Failure to provide the information shall result in automatic denial of reinstatement without the right to a hearing.
  - c. Upon submission of all requirements of subsection (E)(9)(a), the applicant shall meet all requirements of initial certification pursuant to subsection (E)(1). The applicant, for reinstatement after a suspension or revocation, shall pay the fee for reinstatement, pursuant to subsection (K) in the applicable section of the ACJA.
  - d. The board shall not issue any certification under this section to any person or business entity whose certification has been suspended until:
    - (1) The person or business entity seeking reinstatement of a suspended certificate has demonstrated all the requirements of the suspension order have been met; and

- (2) The person or business entity qualifies in accordance with the applicable provisions of this section or other sections of the ACJA.
- e. The board shall not issue any certification under this section to any person or business entity whose certification has been revoked until:
- (1) One year has passed from the date of the board's final order of revocation;
  - (2) The person or business entity seeking certification provides proof of satisfaction of any and all requirements in the order of revocation; and
  - (3) The person or business entity again qualifies in accordance with the provisions of subsection (E)(1) and the applicable sections of the ACJA.

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

1. Code of Conduct. Each individual certificate holder shall adhere to the code of conduct or standards of conduct, subsection (J) in the applicable section of the ACJA.
2. Identification. Upon request by any judicial officer, court employee or member of the public, a certificate holder shall provide proof of certification.
3. Assumed Business Name. A certificate holder shall not transact business in this state under an assumed name or under any designation, name or style, corporate or otherwise, other than the legal name of the individual or business entity unless the person or business entity files with division staff a statement indicating the name for transaction of the business and the legal full name of the certificate holder.
4. Response. A certificate holder shall respond by the specific time stated in any request for information from, and shall provide documents to the director, deputy director, division staff, or board pertaining to certification, renewal of certification, complaints alleging acts of misconduct or violations by the certificate holder, investigative inquiries and compliance audits or defensive driving course monitorings of the practice of the certificate holder. A certificate holder shall respond to any subpoenas or orders issued by the director, division director, board, or any judicial officer. Failure to comply with this subsection by a certificate holder constitutes grounds for discipline pursuant to subsection (H)(6)(c) or denial of renewal of certification pursuant to subsection (G)(3) and (G)(4). Failure to comply with this subsection by a certificate holder in completion of a corrective action plan or defensive driving course monitoring may constitute grounds for discipline, pursuant to subsection (H)(6)(b).
5. Candor.
  - a. A certificate holder shall not knowingly:
    - (1) Make a false statement of material fact or law to a tribunal; or
    - (2) Fail to disclose a material fact to a tribunal, except as required by applicable law.

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

**G. Renewal of Certification.**

- 1. Expiration Date. Certificates expire on the date specified by the applicable section of the ACJA except as otherwise provided in this section. All certificates shall continue in force until expired, voluntarily surrendered, placed on inactive status, suspended or revoked.
- 2. Application. A certificate holder is responsible for applying for a renewal certificate. The certificate holder shall apply for renewal of certification on the form provided by division staff. The board shall set a deadline renewal application date, in advance of the expiration date, to allow a reasonable time frame for processing the renewal application.
  - a. When a certificate holder has filed a timely and complete renewal application, the existing certification does not expire until the administrative process for review of the renewal application has been completed.
  - b. When a certificate holder requests to file an untimely renewal application, the division director may process the untimely application and recommend to the applicable Board to renew a certificate if the untimely renewal applicant demonstrates to the director good cause for the untimely filing. In addition, the following shall apply:
    - (1) The applicant shall submit a complete renewal application and applicable fees, and any other documentation requested by division staff to verify the grounds for the good cause exception requested.
    - (2) The applicant shall not practice in the applicant's profession:
      - (a) until the director decides in writing based on good cause to process the application or
      - (b) if the director decides not to process the untimely application, until an initial application is processed and the applicant is granted certification pursuant to the AJCA § 7-201(E) and the applicable sections of §§ 7-202 through 7-208.
  - c. When a timely renewal application is denied, the existing certification does not expire until the last day for seeking a hearing on the denial decision pursuant to subsection (E)(2)(c)(5); or if a hearing is requested, until the final decision is made by the board pursuant to subsection (H)(25).
  - d. The board may request an informal interview with the applicant for renewal, pursuant to subsection (D)(5)(c)(2)(b), to establish if additional information or an explanation of the information provided by the applicant is needed to determine if the applicant

- continues to meet the qualifications for certification in this section and the applicable section of the ACJA.
- e. The certificate of a certificate holder who does not supply a complete renewal application and payment of the renewal fee in the specified time and manner to division staff shall expire as of the expiration date in the applicable section of the ACJA. Division staff shall treat any renewal application received after the expiration date as a new application, except when the certificate holder requests to file an untimely renewal application pursuant to subsection (G)(2)(b).
3. Additional Information. Before recommending renewal of certification, division staff may require additional information reasonably necessary to determine if the applicant continues to meet the qualifications specified in this section, which may include:
    - a. Background information, pursuant to subsection (E)(1)(a) and the applicable section of the ACJA;
    - b. A personal credit review and review of records pertaining to the applicant by division staff, pursuant to subsection (E)(1)(a)(5); and
    - c. Fingerprinting pursuant to subsection (E)(1)(d);
  4. Decision Regarding Renewal.
    - a. The board may renew a certification if the certificate holder:
      - (1) Meets all requirements for renewal as specified in this section and the applicable section of the ACJA;
      - (2) Submits a completed renewal application; and
      - (3) Pays the renewal fees on or before the expiration date as specified by the applicable section of the ACJA.
    - b. Division staff shall promptly notify the applicant in writing of the board's decision to renew the applicant's certificate in accordance with this section and the applicable section of the ACJA. Each renewed applicant shall receive a document, badge or card evidencing renewal of certification, stating the applicant's name, date of certification, certification number and expiration date.
    - c. The board may deny renewal of certification for any of the reasons stated in subsection (E)(2)(c). Division staff shall promptly notify the applicant, in writing, within ten days of the board's decision to deny renewal of certification. The notice shall include the board's reasons for the denial of renewal of certification and the right of the applicant to a hearing, pursuant to subsection (G)(4)(d).
    - d. An applicant is entitled to a hearing, on the decision to deny renewal of certification if the disciplinary clerk receives a written request for a hearing within fifteen days after the date of the notice of denial. The applicant is the moving party at the hearing and

has the burden of proof. The provisions of subsections (H)(12) through (H)(23) and (H)(25) through (H)(27) apply regarding procedures for hearing and appeal.

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

### 1. Complaints: Filing and General Provisions.

a. Filing of Complaint. All judicial officers, court employees and certificate holders shall, and any person may, notify division staff if it appears a certificate holder has violated statutes, court rules, this section or the applicable section of the ACJA. The complainant shall provide the complaint in writing with sufficient specificity to warrant further investigation. The complaint form shall provide the name, telephone number and address of the complainant.

b. Director Initiated Complaints. In accordance with the policies and procedures developed pursuant to subsections (D)(2)(a)(6) and (D)(2)(b)(2), the director may direct division staff to investigate allegations of acts of misconduct or violations of statutes, court rules, or the ACJA, which may result in a complaint, if such investigation protects and serves the best interest of the public. This shall include an investigation where the complainant does not wish to have their identity disclosed to the certificate holder.

(1) Review of allegations. Division staff shall:

- (a) Review the allegations and determine if the supreme court has jurisdiction;
- (b) Determine if there is sufficient information to permit investigation;
- (c) Verify details in the allegations including the certificate holder's status and, if available, any addresses, phone numbers or other relevant factors;
- (d) Corroborate, by independent observations and information, the allegations of acts of misconduct or violations of statutes, court rules or the ACJA, to determine if the allegations are credible and reliable; and
- (e) Meet with the division director to confirm jurisdiction and relevant factors contained in the allegations.

(2) Division staff shall, upon completion of the review, prepare a written report of the allegations and include the following:

- (a) Confirmation of supreme court jurisdiction;
- (b) Determination, if the allegations are true, they would warrant discipline;
- (c) Verification of details in the allegations; and
- (d) Corroboration of relevant facts by independent observations.

(3) Division staff shall forward the written report to the director for review and schedule a meeting with the director and division director.

(4) The director shall review the written report and direct staff to:

- (a) Conduct further review of the allegations;
- (b) Initiate a complaint naming the director as the complainant, pursuant to subsection (D)(2)(b)(3); or
- (c) Determine the allegations do not warrant the filing of a director initiated complaint.

- c. Anonymous Complaints. Division staff shall not accept anonymous complaints.
- d. Authority after Expiration. If a complaint or investigation is pending prior to the expiration date of a certificate, the provisions of subsection (G)(1) and the applicable sections of the ACJA do not affect the authority of:
  - (1) The director to initiate a complaint, pursuant to subsection (D)(2)(b)(3);
  - (2) Division staff to investigate a complaint, pursuant to subsection (D)(4)(b)(5); or
  - (3) The board to take disciplinary action regarding the certification of a certificate holder, pursuant to subsection (D)(5)(c)(1)(g).
- e. Standing of Complainant. A complainant does not have standing regarding any proceedings and is not a party to any proceedings. The complainant may, upon request to division staff, receive notice of any public proceeding concerning the complaint or any consent agreements. The complainant submits to the jurisdiction of the supreme court's certification and licensing division for all purposes relating to the proceedings.
  - (1) The complainant shall keep division staff informed of any changes of mailing address, telephone number or email address during the investigation and any disciplinary proceedings.
  - (2) Division staff shall forward any correspondence or notice to the complainant by United States mail to the last address of record with division staff.
  - (3) Division staff shall provide the complainant with the following information:
    - (a) A written acknowledgement of the receipt of the complaint;
    - (b) A copy of the letter sent to the certificate holder requiring a response to the alleged acts of misconduct or violations and the initial response by the certificate holder, within twenty days of receipt of the certificate holder's initial response;
    - (c) Notice, if the complainant has requested notice, of any public proceeding concerning the complaint or any consent agreement;
    - (d) Notice of the final disposition of each allegation; and
    - (e) Notice of the dismissal of the complaint within ten days of the determination by the division director, if applicable, pursuant to subsection (H)(2)(b).
  - (4) Failure by division staff to provide the complainant with information as required by this subsection shall not affect the ultimate disposition of any allegations of acts of misconduct or violations by the certificate holder.
  - (5) The complainant may file a request for review by the board of the division director's dismissal of the complaint, within ten days of the date of the notice of dismissal pursuant to subsection (H)(2)(e).
- f. Non-abatement. Unwillingness, failure of the complainant to cooperate with division staff or the board, withdrawal of the complaint or a specific allegation of misconduct or violation contained in the complaint, settlement or compromise between the complainant and the certificate holder, or restitution by the certificate holder shall not abate the processing of any complaint or disciplinary proceeding.
- g. Confidentiality of Complaints. The director, deputy director, division staff, board and court employees shall keep information or documents obtained or generated by the

director, deputy director, division staff, board or court employees in the course of an open investigation or received in an initial report of misconduct confidential, except as mandated by court rules or this section.

- (1) Confidential information may also be disclosed during the course of an open investigation:
    - (a) To court staff, the attorney general, county attorney, law enforcement and other regulatory officials;
    - (b) If the director makes a finding the disclosure is in the best interest of the public and the interest is not outweighed by any other interests; or (c) Is not contrary to law.
  - (2) Once a finding of probable cause has been entered all information and documents are open for public inspection unless:
    - (a) Confidential by law or public record rules adopted by the supreme court; or
    - (b) If the deputy director, as probable cause evaluator, determines further investigation is necessary, the information or documents and those compiled in the further investigation shall remain confidential until probable cause is determined.
  - (3) Complaints dismissed by the division director, pursuant to subsection (H)(2)(b) for lack of jurisdiction or clear insufficiency are confidential and not a matter of public record for inspection.
  - (4) Complaints dismissed by the board, pursuant to subsection (H)(24)(a)(3) are a matter of public record for inspection.
- h. Investigative Subpoenas. Upon the recommendation of division staff and a demonstration of good cause, the division director, pursuant to subsection (D)(4)(a)(1), may issue an investigative subpoena to any person or entity:
- (1) For the purpose of securing documents or information from any person or entity, if the documents or information are related to a pending investigation of alleged acts of misconduct or violations regarding statutes, court rules, this section or the applicable section of the ACJA.
  - (2) Subpoenas issued by the division director shall be issued and served in the same manner as provided by the Arizona Rules of Civil Procedure. An employee of the court or any other person as designated by the Arizona Rules of Civil Procedure may serve the subpoena.
- i. Processing Time Frames. Division staff shall:
- (1) Prepare any complaint the division director has dismissed pursuant to subsections (H)(2)(b) and (c) and forward the complaint to the board for review, pursuant to subsection (H)(2)(d), at the next regularly scheduled board meeting.
  - (2) Prepare and forward to the board for review at the next regularly scheduled board meeting, any investigated complaint the deputy director has reviewed and entered a finding regarding probable cause, pursuant to subsection (H)(5)(c).
  - (3) Prepare the documents for informal discipline no later than 30 days following the order of the board, pursuant to subsections (H)(7)(b) and (H)(25), unless the board extends the time for good cause.

- (4) Prepare the documents for formal discipline no later than 30 days following the order of the board pursuant to subsections (H)(9)(b) and (H)(25), unless the board extends the time for good cause.
- (5) File the formal statement of charges with the disciplinary clerk and arrange for service no later than 30 days following the order of the board, pursuant to subsection (H)(10), unless the board extends the time for good cause.
- (6) Serve the board's order of emergency summary suspension and expedited hearing immediately on the certificate holder, pursuant to subsection (H)(9)(d)(2).
- (7) Except as provided in subsections (H)(1)(i)(6) and (8), deposit in the United States mail addressed to the last known address on file with division staff, written notice of the board's final decision and order, regarding a complaint matter, to the certificate holder and complainant within ten days after the board's decision, pursuant to subsection (H)(26)(b) and (c). Notice by mail is complete upon deposit in the United States mail.
- (8) Mail the board's final order of suspension or revocation of the certificate, pursuant to subsection (H)(26)(b) to the certificate holder, by certified mail return receipt requested, within two days, after the board's decision, addressed to the last known address on file with division staff; and
- (9) Process complaints timely, with the goal of processing 98 percent of all complaints within 22 months from date of receipt to final decision by the board.

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

a. Division staff shall:

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

- (3) Report all complaints dismissed by the division director to the board at the next regularly scheduled board meeting following the determination by the division director; and
    - (4) Provide written notice to the complainant and the certificate holder of the division director's decision to dismiss the complaint for the reasons in subsection (H)(2)(b) and (c), within ten days of the division director's decision.
  - b. The division director may:
    - (1) Direct division staff to return an incomplete complaint to the complainant for additional information;
    - (2) Dismiss a complaint, pursuant to subsection (D)(4)(a)(2), with or without prejudice, if the complaint falls outside the jurisdiction of the supreme court, the statutes, court rules, this section or the applicable section of the ACJA;
    - (3) Dismiss a complaint, pursuant to subsection (D)(4)(a)(3), with or without prejudice, if the complaint meets any of the criteria of subsection (H)(2)(a)(2)(b) through (f); or
    - (4) Refer the complaint to another state agency or entity with jurisdiction, if appropriate, pursuant to subsection (D)(4)(a)(4).
  - c. The division director shall dismiss the complaint, if the complainant does not supply documents or other information to remedy an insufficient complaint or demonstrate the alleged acts of misconduct or violations are within the certificate holder's responsibilities as required by statutes, court rules, this section or the applicable section of ACJA.
  - d. The board shall review, pursuant to subsection (D)(5)(c)(1)(e), the division director's dismissal of a complaint and do one of the following:
    - (1) Affirm the division director's dismissal; or
    - (2) Request additional investigation of the dismissed complaint; pursuant to subsection (D)(5)(c)(2)(c).
  - e. The complainant may request the board review the division director's dismissal of the complaint pursuant to subsection (H)(2)(b) or (c) by submitting a written request for review, specifying the requested reasons for the board's review. The complainant shall submit the request for review to division staff within ten days of the written notice of the division director's dismissal of the complaint.
3. Investigation. Division staff shall investigate the complaint, after completion of the initial screening of the complaint and the determination a complaint is within the jurisdiction of the supreme court and warrants further investigation pursuant to subsection (H)(2)(a)(1)(g).
    - a. Preliminary Investigation. Division staff shall conduct an investigation of all complaints not dismissed by the division director to determine if a certificate holder has violated statutes, court rules, this section, or the applicable section of the ACJA; or

for the purpose of securing information useful in the lawful administration of the law, this section, or the applicable sections of the ACJA.

- b. Notification to Certificate Holder of Complaint. Division staff shall send the complaint to the certificate holder within fifteen days of receiving the complaint or the date the director initiates a complaint pursuant to subsections (D)(2)(b)(3) and (H)(1)(b)(4)(b).
  - c. Certificate Holder's Response to Notification of Complaint. The certificate holder shall provide a written response to the complaint within thirty days of the notification of the complaint. The board shall not proceed with disciplinary action without providing the certificate holder the complaint and an opportunity to respond to the complaint, except in a matter regarding an emergency suspension pursuant to subsection (H)(9)(d). Failure by the certificate holder to accept notification of a complaint or failure to respond to the complaint shall not prevent division staff from proceeding with an investigation and the board from taking any disciplinary action.
    - (1) If the certificate holder is unable to respond to a complaint within the time frame established by subsection (H)(3)(c), the certificate holder may submit a written request to the division director for an extension of time to respond. The request for an extension of time to respond shall demonstrate good cause exists for an extension and shall provide a proposed date for fulfillment of the response requirement. The certificate holder shall file the written request for an extension of time to respond to the complaint, no later than five days prior to the date the response is due.
    - (2) The division director shall determine if good cause exists for an extension. Division staff shall notify the certificate holder of the division director's decision on the request for an extension of time for providing a written response, within five days of the request for extension from the certificate holder.
4. Preparation of Investigation Summary. Upon completion of the investigation, division staff shall prepare a written investigation summary for review by the probable cause evaluator. The investigation summary shall include an analysis of the allegations of misconduct and violations and a recommendation as to whether probable cause exists demonstrating the certificate holder committed any of the alleged acts of misconduct or violations.
  5. Probable Cause Review. Pursuant to subsection (H)(4) division staff shall forward the investigation summary to the probable cause evaluator for review and determination as to whether probable cause exists misconduct or violations occurred and are demonstrated in the investigation summary.
    - a. The deputy director, serving in the capacity of probable cause evaluator pursuant to subsection (D)(3)(a), shall review the written investigation summary of the allegations of acts of misconduct or violations. The deputy director may agree or disagree with the recommendations contained in the summary and may do one or more of the following:
      - (1) Direct division staff to investigate further;
      - (2) Determine probable cause does not exist demonstrating the certificate holder has committed any acts of misconduct or violations of the statutes, court rules, this

section, or the applicable section of the ACJA and enter a written finding to that effect; or

- (3) Determine probable cause exists demonstrating the certificate holder has committed one or more acts of misconduct or violations of the statutes, court rules, this section, or the applicable section of the ACJA and enter a written finding to that effect.
- b. If the probable cause evaluator directs division staff to investigate the complaint further, pursuant to subsection (H)(5)(a)(1), division staff shall do so immediately.
  - c. Upon review of the finding by the probable cause evaluator, pursuant to subsection (H)(5)(a)(2) and (3), division staff shall forward to the board, pursuant to subsection (H)(1)(i)(2), the investigation summary, finding by the probable cause evaluator and a written recommendation by the division director for the appropriate disposition of the complaint. The written recommendation by the division director shall include any sanctions if applicable, pursuant to subsections (H)(7), (H)(9), (H)(24)(a)(6) and (H)(24)(b). The board shall review these documents at the next regularly scheduled board meeting and do one of the following:
    - (1) Determine the certificate holder did not commit any acts of misconduct or violations and dismiss the complaint pursuant to subsections (D)(5)(c)(1)(g) and (H)(24)(a)(3);
    - (2) Determine the allegations of acts of misconduct or violations do not warrant discipline pursuant to subsection (D)(5)(c)(1)(g), but the certificate holder's actions need modification or elimination and send an advisory letter to the certificate holder pursuant to subsections (H)(24)(a)(4) and (H)(24)(b)(1);
    - (3) Determine the allegations of acts of misconduct or violations may be resolved through informal discipline proceedings pursuant to subsection (H)(7);
    - (4) Determine the acts of misconduct or violations may be resolved through a formal interview, pursuant to subsection (H)(8);
    - (5) Determine the acts of misconduct or violations may be resolved through a formal discipline proceeding, pursuant to subsection (H)(9); or
    - (6) Determine the acts of misconduct or violations pose harm or a risk to the public health, safety or welfare and require resolution through an emergency summary suspension, pursuant to subsection (H)(9)(d). An emergency summary suspension is a formal discipline proceeding.
6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:
    - a. Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;
    - b. Failed to comply with or complete a corrective action plan resulting from an audit or course monitoring;

- c. Failed to cooperate with or supply information to the director, deputy director, division staff or board by the specific time stated in any request;
- d. Aided or assisted another person or business entity to provide services requiring certification if the other person or entity does not hold the required certification;
- e. Conviction of a criminal offense while certified by final judgment of a felony relevant to certification;
- f. Failed to provide information regarding a criminal conviction;
- g. Exhibited gross negligence;
- h. Exhibited incompetence in the performance of duties;
- i. Evaded service of a subpoena or notice of the director, division director or board;
- j. The existence of any cause for which original certification or renewal of certification could have been denied pursuant to subsections (E)(2)(c) or (G)(4)(c) and the applicable section of the ACJA;
- k. Engaged in unprofessional conduct, including:
  - (1) Assisted an applicant or certificate holder in the use of deception, dishonesty or fraud to secure an initial certificate or renewal of a certificate;
  - (2) Failed to comply with any court order, board order or other regulatory agency order relevant to the profession or occupation;
  - (3) Failed to comply with any federal, state or local law or rule governing the practice of the profession or occupation;
  - (4) Failed to comply with any terms of a consent agreement, restriction of a certificate or corrective action plan;
  - (5) Failed to retain client or customer records for a period of three years unless law or rule allows for a different retention period;
  - (6) Failed to practice competently by use of unsafe or unacceptable practices;
  - (7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent professional certificate holder engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer;
  - (8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice;
  - (9) Used advertising intended to or having a tendency to deceive the public;
  - (10) Used a supreme court certification to deceive the public in level of skills or abilities;

- (11) Willfully made or filed false reports or records in the practice of the profession or occupation;
- (12) Failed to file required reports, records or pleadings in the practice of the profession or occupation;
- (13) Delegated professional or occupational responsibilities or duties to an employee or person who the certificate holder knows does not possess the necessary level of education, experience, skills or credentials to perform the duties of the profession or occupation unless authorized to do so by the applicable section of the ACJA;
- (14) Performed the responsibilities or duties of the profession or occupation when medically or psychologically unfit to do so;
- (15) Engaged in habitual substance abuse;
- (16) Engaged in undue influence over a client or customer to the benefit, financial or otherwise, of the certificate holder or a third party; or
- (17) Violated any statutory, court rule, or the applicable ACJA section regarding a confidentiality requirement.

7. Informal Disciplinary Proceedings.

- a. Commencement. Following entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsections (H)(5)(a) and (c), the board may commence informal disciplinary proceedings if the board finds the complaint is appropriate for resolution through informal disciplinary proceedings.
  - b. Decision of the Board. The board may resolve the complaint through informal disciplinary proceedings and impose an informal sanction pursuant to subsection (H)(24)(a)(6)(a) or may take other action pursuant to this section. The Board, pursuant to subsection (D)(5)(c)(1)(f)(iv), shall order the preparation of documents necessary to commence informal disciplinary proceedings. The board may make procedural determinations to consolidate or sever any informal discipline matter pursuant to subsection (D)(5)(c)(2)(e). The provisions of subsections (H)(24) and (H)(25) apply to the decision and order of the board. Informal disciplinary proceedings:
    - (1) Do not provide the certificate holder the right to a hearing;
    - (2) May result in the informal sanction of a letter of concern;
    - (3) Are not subject to special action proceedings pursuant to subsection (H)(27); and
    - (4) Are not confidential.
8. Request for Formal Interview. Upon entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsections (H)(5)(a) and (c), and a board determination formal discipline is warranted, but before the filing of the formal statement of charges, the board may request a formal interview with a certificate holder, pursuant to subsection (D)(5)(c)(2)(d). The request for a formal interview is to determine if the facts of the complaint may be capable of resolution outside of a formal disciplinary process by consent agreement or other negotiated settlement, pursuant to subsection (H)(24)(a)(6)(c) between the board and certificate holder. The board shall hold the formal interview at the next regularly

scheduled board meeting, unless the board determines good cause to expedite the interview.

- a. Once the board determines a formal interview is necessary, division staff shall provide the certificate holder a copy of the investigation summary, finding by the probable cause evaluator and the written recommendation by the division director for the appropriate disposition of the complaint. Division staff shall also provide written notice of the day and time of the scheduled interview. If the certificate holder declines the board's request for an interview, the certificate holder does not forfeit the right to request a hearing pursuant to subsection (H)(12).
- b. If the certificate holder declines the board's request for a formal interview, or if the division director's recommended sanctions for future found violations include a suspension of more than twelve months or revocation, the board shall order the preparation of documents necessary for a filing of a formal statement of charges pursuant to subsections (D)(5)(c)(1)(f)(iv) and (H)(9)(b). The board may consolidate or sever any discipline matter pursuant to subsection (D)(5)(c)(2)(e).
- c. Upon the completion of the formal interview, if the board enters a finding the evidence obtained during the investigation or provided by the certificate holder merits a suspension of more than twelve months or revocation of the certificate, the board shall order the preparation of documents for filing a formal statement of charges, pursuant to subsections D(5)(c)(1)(f)(iv) and H(9)(b).
- d. Upon the completion of the formal interview, if the board enters a finding the evidence obtained during the investigation or provided by the certificate holder demonstrates the public's health, safety, or welfare requires emergency action, the board shall issue an emergency summary suspension order pursuant to subsections (D)(5)(c)(1)(f)(v) and H(9)(d).
- e. Upon completion of the formal interview, if the board determines the evidence obtained during the investigation or provided by the certificate holder does not merit a suspension of more than twelve months, revocation, or an emergency summary suspension, the board may take one or more of the following actions:
  - (1) Determine the certificate holder did not commit any acts of misconduct or violations of statutes, court rules, this section, or the applicable section of the ACJA and dismiss the complaint pursuant to subsections (D)(5)(c)(1)(g) and (H)(24)(a)(3);
  - (2) Determine the allegations of acts of misconduct or violations of statutes, court rules, this section, or the applicable section of the ACJA, do not warrant discipline, but the certificate holder's actions need modification or elimination and send an advisory letter to the certificate holder, pursuant to subsections (D)(5)(c)(1)(g), (H)(24)(a)(4) and (H)(24)(b)(1);
  - (3) Determine the certificate holder committed one or more acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA, and the complaint is appropriate for resolution through informal discipline proceedings pursuant to subsections (D)(5)(c)(1)(g) and (H)(7);

- (4) Determine the certificate holder committed one or more acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA, and the complaint is appropriate for resolution through a consent agreement as part of formal disciplinary proceedings, pursuant to subsections (D)(5)(c)(1)(g) and (H)(24)(a)(6)(c); or
  - (5) Determine the certificate holder committed one or more acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA and the complaint is appropriate for resolution only through formal discipline proceedings, pursuant to subsection (D)(5)(c)(1)(g) and (H)(9).
- f. If the board, after the formal interview is concluded, determines the acts of misconduct or violations warrant an emergency summary suspension, the board shall make an order for an expedited hearing, pursuant to subsections (H)(9)(d)(1) and (H)(12)(d).
9. Formal Disciplinary Proceedings.
- a. Commencement. Upon entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsection (H)(5)(c), the board may commence formal disciplinary proceedings.
  - b. Decision of the Board. On review of the recommendation of the division director, the board may resolve the complaint through formal disciplinary proceedings and impose informal and formal sanctions pursuant to subsection (H)(24)(a) and (b) or may take other actions pursuant to this section. The board, pursuant to subsection (D)(5)(c)(1)(f)(iv) shall order the preparation of the documents necessary to commence formal disciplinary proceedings. The board may make procedural determinations to consolidate or sever any formal disciplinary matter pursuant to (D)(5)(c)(2)(e). The provisions of subsections (H)(24) and (H)(25) apply to the decision and order of the board. Formal disciplinary proceedings:
    - (1) Provide the certificate holder the right to a hearing, pursuant to subsection (H)(12)(c);
    - (2) May result in informal and formal sanctions, including an emergency summary suspension pursuant to subsections (H)(24)(5) and (6);
    - (3) May result in costs and civil penalties pursuant to subsections (H)(24)(6)(j) and (k);
    - (4) Are subject to special action proceedings pursuant to subsection (H)(27); and
    - (5) Are not confidential.
  - c. Notice to Certificate Holder. Upon commencement of formal disciplinary proceedings by a board order, division staff shall notify the certificate holder of the board's order and provide the certificate holder with a copy of the investigation summary, the division director's recommendations and the deputy director's finding of probable cause.
  - d. Emergency Summary Suspension.
    - (1) Upon entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsection

(H)(5)(c), if the board finds the public health, safety or welfare is at risk and requires emergency action, the board shall order an immediate emergency summary suspension of a certificate and set a date for an expedited hearing while formal disciplinary proceedings are pending.

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

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

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

11. Answer to Formal Statement of Charges or Default. The certificate holder shall file an answer to the formal statement of charges within fifteen days after the date the statement is served, unless otherwise ordered by the board for good cause. Answers shall comply with Rule 8, Rules of Civil Procedure. Any defenses not raised in the answer are waived.

If a certificate holder fails to file an answer within the time provided, the certificate holder is in default and the factual allegations in the formal statement of charges are deemed admitted. The board may enter a finding or findings against the certificate holder of one or more of the assertions contained in the notice.

12. Right to Hearing.

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

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

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

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

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

- a. Ensure the hearing is held within 60 days of receipt of the request for hearing. The hearing officer may continue the hearing date upon request or stipulation of the parties, or upon the hearing officer's own motion, for good cause shown. The hearing officer shall grant continuances no more than 30 days at a time and may not extend the hearing on the merits beyond 120 days from the filing of the formal statement of charges.
- b. If the request to continue the hearing is filed by division staff, the hearing officer shall ensure the hearing is held as soon as practical at the discretion of the hearing officer but no less than fifteen days after notice, as required by subsection (H)(16).

16. Notice of Hearing. The disciplinary clerk shall prepare and give notice of the hearing to the applicant or certificate holder and division staff, at least fifteen days prior to the date set for hearing.

- a. The notice shall include the following information:
  - (1) A statement of the legal authority and jurisdiction for conduct of the hearing;
  - (2) A statement of the date, time, place and nature of the hearing; and
  - (3) A reference to the particular sections of the statutes, rules and ACJA sections involved.
- b. The disciplinary clerk shall accomplish service of the notice of hearing by United States mail to the last address of record on file with division staff. Service is accomplished in accordance with Rule 5, Rules of Civil Procedure by deposit in the United States mail.
- c. If an attorney represents an applicant, certificate holder or division staff, the disciplinary clerk shall make service to the attorney of record.

17. Filings of Pleadings, Motions and Other Documents.

- a. The applicant or certificate holder and division staff shall file all pleadings, motions or other documents with the disciplinary clerk at least fifteen days prior to the scheduled hearing date, unless otherwise ordered by the hearing officer.
- b. The applicant or certificate holder and division staff shall file responses to all pleadings, motions, or other documents with the disciplinary clerk within ten days of the filing of the pleading, motion, or other document.
- c. The party filing the pleading, motion, or other document may reply within five days of the filing of the response to the motion.
- d. Copies of all filings shall be delivered to the disciplinary clerk, the hearing officer and all parties to the proceeding.

## 18. Discovery.

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

## 19. Subpoena.

- a. For the purpose of the hearing, a hearing officer may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the subject of any hearing.
  - b. Subpoenas shall be issued by a hearing officer and served in the same manner as provided by Rule 45, Rules of Civil Procedure. An employee of the court or any other person as provided by Rule 45, Rules of Civil Procedure may serve the subpoena.
  - c. If a person fails to obey a subpoena served in accordance with the provisions of this section, the board or hearing officer may forward a report of the disobedience, together with a copy of the subpoena and proof of service, to the superior court and request the superior court judge issue an order requiring the appearance by a person or the production of documents, or both. The superior court may treat the failure to obey the subpoena as contempt of court and may impose penalties as though the person had disobeyed a subpoena issued by the court.
20. Prehearing Conference. The hearing officer may order and conduct a pre-hearing conference at the request of any party or on the hearing officer's own initiative. The purpose of the conference is to consider imposing limitations to promote simplicity in procedures, fairness in administration, elimination of unnecessary expense and protection of the public while preserving the rights of the certificate holder. The hearing officer may take any of the following actions:
- a. Establish a hearing schedule to ensure early and continuing control so the matter shall not be protracted because of lack of management;
  - b. Dispose of outstanding procedural matters;
  - c. Narrow the issues for adjudication;
  - d. Dispose of preliminary legal issues, including ruling on pre-hearing motions;
  - e. Obtain stipulations from the parties to the admission of evidence, facts and legal conclusions not contested;
  - f. Identify witnesses and coordinate testimony; and
  - g. Consider any other matters to aid in the expeditious conduct of the hearing.

21. Procedure at Hearings.

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

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

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

c. Conduct of Hearing.

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

d. Record of Hearing.

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

## 22. Recommendation Report of Hearing Officer.

- a. The hearing officer shall, within 30 days of the closing of the record of a hearing, prepare a written recommendation report and file the report with the disciplinary clerk. The recommendation report shall include findings of fact, based on a preponderance of the evidence and conclusions of law, separately stated.
- b. The hearing officer shall take testimony and receive evidence regarding alleged acts of misconduct or violations and possible sanctions. If the hearing officer recommends the board enter a finding the certificate holder committed one or more acts of misconduct or violations, the hearing officer shall include in the recommendation report, in a separately stated section, an analysis of mitigating and aggravating factors and recommended imposition of permissible sanctions pursuant to subsection (H)(24). The hearing officer shall base the recommendations exclusively on the matters officially noticed and the evidence presented.
  - (1) Mitigating factors may include but are not limited to the following:
    - (a) The absence of a prior disciplinary record;
    - (b) The absence of a dishonest motive;
    - (c) The absence of a selfish motive;
    - (d) Personal or emotional problems;
    - (e) A timely good faith effort to make restitution or to rectify consequences of misconduct;
    - (f) Full and free disclosure to the division staff, the board or the hearing officer;
    - (g) A cooperative attitude toward any proceedings;
    - (h) Inexperience in the practice of the profession or occupation;
    - (i) Character or reputation;
    - (j) Physical or mental disability;
    - (k) Physical or mental impairment;
    - (l) Delays in the disciplinary proceedings;
    - (m) Interim rehabilitation;
    - (n) Imposition of other penalties or sanctions;
    - (o) Remorse; or
    - (p) The remoteness of prior offenses.
  - (2) Aggravating factors may include but are not limited to the following:
    - (a) A prior disciplinary record;
    - (b) A dishonest motive;
    - (c) A selfish motive;
    - (d) Multiple offenses;
    - (e) Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with this section, the applicable section of ACJA, court rules or orders of the hearing officer;
    - (f) Submission of false evidence, false statements or other deceptive practices during the discipline process;
    - (g) Refusal to acknowledge wrongful nature of the conduct;
    - (h) Vulnerability of the victim;

- (i) Substantial experience in the profession or occupation; or (j) Indifference to making restitution.
- c. The disciplinary clerk shall distribute the hearing officer recommendation report to all parties and the board by United States mail to the last address on file with the division staff. Distribution is accomplished in accordance with Rule 5, Rules of Civil Procedure by deposit in the United States mail.
  - d. The board may adopt or modify the hearing officer's recommendation report in whole or in part.
  - e. The board may remand the matter to the hearing officer in whole or in part, designating the issues remanded. The board shall provide the hearing officer with an order identifying the issues remanded.
23. Rehearing. A party to the hearing may request a rehearing of the matters involved in the hearing. The requesting party shall file the written request with the hearing officer and the disciplinary clerk within fifteen days after the disciplinary clerk has distributed the hearing officer's recommendation report to the parties pursuant to subsection (H)(22)(c). The requesting party shall base the request for rehearing on one or more of the grounds listed in Rule 59, Rules of Civil Procedure. The hearing officer shall allow any party served with a request for rehearing to file a response within ten days of service. The hearing officer may grant a rehearing of the matters involved in the hearing and shall make the decision to grant or deny the request within ten days of the date the response for rehearing is filed.
24. Possible Actions for Resolution of a Complaint.
- a. Upon completion of an investigation concerning alleged acts of misconduct or violations by a certificate holder, which may or may not include a formal interview, informal or formal disciplinary proceedings, or a hearing, the board shall do one or more of the following:
    - (1) Request division staff to conduct further investigation;
    - (2) Refer the complaint to another entity with jurisdiction;
    - (3) Determine no violation exists and dismiss the complaint with or without prejudice;
    - (4) Determine no acts of misconduct or violation occurred and no discipline is warranted; however, the certificate holder's actions need modification or elimination and issue an advisory letter pursuant to subsection (D)(5)(c)(1)(g);
    - (5) Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules, this section, or the applicable ACJA specific sections or subsection (H)(6) and order an emergency summary suspension, pursuant to subsection (H)(9)(d);
    - (6) Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules, this section, the applicable ACJA sections or subsection (H)(6) and issue an order imposing any or a combination of the following informal or formal disciplinary sanctions:
      - (a) Issue a letter of concern;

- (b) Issue a censure;
- (c) Resolve any found acts of misconduct or violations by consent order or other negotiated settlement;
- (d) Place specific restrictions on a certificate;
- (e) Place the certificate holder on probation for a set period of time under specified conditions;
- (f) Mandate additional training for the certificate holder;
- (g) Issue a cease and desist order pursuant to subsection (E)(6);
- (h) Order suspension of a certificate for a set period of time with specific conditions for reinstatement;
- (i) Order revocation of a certificate with specific conditions for reinstatement;
- (j) Assess costs associated with the investigation and disciplinary proceedings; or
- (k) Impose civil penalties associated with the investigation and disciplinary proceedings.

b. The following provisions apply to the actions specified in subsection (H)(24)(a):

- (1) An advisory letter is not a discipline sanction and is confidential. While the conduct does not warrant any disciplinary action, the board believes the certificate holder should modify or eliminate certain practices and continuation of the activities leading to the documentation regarding the conduct being submitted to the board may result in future board action against the certificate holder. A certificate holder may file a response with the board no later than fifteen days after the date of the advisory letter. The certificate holder's response is confidential and division staff shall file the response in the complaint file.
- (2) An informal disciplinary proceeding may result in a letter of concern but may not include a censure, restrictions on a certificate, probation, mandated additional training, suspension or revocation of the certificate, or imposition of civil penalties or costs. A letter of concern is a written informal discipline sanction and is not confidential or appealable. A certificate holder may file a response to the letter of concern no later than fifteen days after the date of the letter of concern. The certificate holder's response is public and division staff shall file the response in the complaint file.
- (3) The board may impose informal discipline in combination with formal discipline.

25. Decisions and Orders. The board shall make final decisions or orders in writing and shall include findings of fact and conclusions of law, separately stated. The board shall make findings of fact by a preponderance of the evidence, based exclusively on the evidence and on matters officially noticed and consider mitigating or aggravating factors pursuant to subsections (H)(22)(b)(1) and (2).

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

- a. Regarding an initial or renewal certification matter, to the applicant or certificate holder within ten days, by deposit in the United States mail addressed to the last known address

- on file with division staff. Notice by mail is complete upon deposit in the United States mail.
- b. Regarding suspension or revocation of certification to the certificate holder by certified mail, return receipt requested, within two days, addressed to the last known address on file with division staff pursuant to subsection (H)(1)(i)(8). Division staff shall ensure the order of emergency summary suspension is immediately served on the certificate holder pursuant to subsection (H)(9)(d)(2). Division staff shall send any other disciplinary order by the board, not involving suspension or revocation of certification, to the certificate holder within ten days by deposit in the United States mail addressed to the last known address on file with division staff, pursuant to subsection (H)(1)(i)(7). Notice by mail is complete upon deposit in the United States mail.
  - c. Regarding a complaint matter, to the complainant within ten days, pursuant to subsection H(1)(i)(7), by deposit in the United States mail addressed to the last known address on file with division staff. Notice by mail is complete upon deposit in the United States mail.
27. Filing of Special Action. Decisions of the board pursuant to this section and the applicable ACJA sections are final. Parties may seek judicial review through a petition for a special action within 35 days after entry of the board's final order. The petition for special action shall be pursuant to the Arizona Rules of Procedure for Special Actions.

**I. Policies and Procedures for Board Members.** The purpose of a board is to assist the supreme court in the protection of the public through the certification and oversight of certificate holders, to ensure conformance by certificate holders to the highest ethical standards and performance of responsibilities in a professional and competent manner.

- 1. Establishment of Boards and Appointment and Terms of Members. The establishment of the boards and the appointment and terms of members are specified in subsections (D)(5)(a) and (b).
- 2. Role and Responsibilities of Board Members. In addition to the provisions of subsection (D)(5)(c), the following provisions apply:
  - a. Role. The primary role of the board members is protection of the public through the fair and impartial application of the applicable section of the ACJA and court rules. Members should consider the views and interests of regulated professionals and the profession; however, members shall balance this against the member's primary role of protection of the public.
  - b. Attendance. Members shall attend and actively participate in board meetings and assist with the administration of board affairs. Regular attendance by each member of the board helps ensure full contribution of all members. Therefore, members are required to regularly attend and participate in board meetings. The board chair shall address a board-attendance issue regarding a member as follows:

- (1) A board-attendance problem occurs if a member:
    - (a) Has two consecutive un-notified absences where the member did not provide advance notification to division staff the member would be absent;
    - (b) Has three consecutive absences where the member did provide advance notification to division staff the member would be absent; or
    - (c) Misses one third of the total number of regular board meetings in a twelve month period.
  - (2) Upon determination of a board-attendance problem, the chair shall discuss the issue with the member. The chair shall share the member's response at the next board meeting and the board shall consider the appropriate action to take regarding the member's membership on the board. If the board decides to recommend to the chief justice for the termination of the membership of the member, the chair shall inform the member of the board's decision. The chair shall request a letter of resignation from the member and the return of any board materials. The board shall promptly initiate the process for the recruitment and recommendation of a new member.
- c. Expenses. Members shall not receive compensation for their services, but may receive reimbursement for their travel and other expenses incidental to the performance of their duties, pursuant to the adopted state guidelines.
  - d. Gifts and Awards. A member shall not solicit or accept any gift or award from any professional certified individual, business or association, including a testamentary gift, unless the member or other recipient of the gift is related to the provider of the gift or award. For the purposes of this paragraph, "gift" includes money, services, travel, food, or entertainment and "related persons" includes a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the member maintains a close, familial relationship. It is acceptable for the board or a member to accept an award, in recognition of service, from an association not directly related to their respective professional association, for example, the American Judicature Society.
  - e. Contractual Arrangements. A member shall carefully consider entering into any contractual arrangement with any professional certificate holder for the provision of any services related to the associated profession. The member shall consider whether such an association could result in a conflict of interest, or the appearance of a conflict of interest.
  - f. Referrals. A member shall carefully consider whether to recommend the services of any professional certificate holder to a member of the public or to accept a referral from a regulated professional or regulated business. The member shall consider whether a referral could result in a conflict of interest, or the appearance of a conflict of interest.

- g. Professional Associations. A member shall not serve simultaneously as an officer or board member of a professional association for the regulated profession and as a member of the board.

### 3. Organization.

- a. Chair. The chief justice shall designate the chair of the board, unless otherwise designated by the applicable ACJA section. If the chair resigns or ceases to be a member of the board, the chief justice shall appoint another person, either an existing member of the board or a new appointee, to serve as chair. The chair shall perform the duties normally associated with the office and shall preside over all general meetings of the board.
- b. Vice Chair. The board shall elect a vice chair from among the appointed members of the board. The vice chair shall serve in the capacity as vice chair for a specified term. If the vice chair resigns or ceases to be a member of the board, the board shall vote to elect a new vice chair from among the existing members. The vice chair shall act as chair in the absence of the chair.
- c. Subcommittees. The chair or the board may establish such subcommittees as deemed necessary to adequately serve the needs of the applicable program. Each subcommittee shall consist of a chair to be named by the board chair or the board and members who volunteer and are approved for service. The chair or the board may appoint additional individuals who are not appointed members of the board to a subcommittee. A subcommittee shall exist only so long as it serves a current, useful purpose. A subcommittee may be dissolved by the board chair or the board if it is deemed it has fulfilled its purpose.

### 4. Meetings.

- a. Regular Meetings. The board shall meet no less than six times per year for regular meetings, unless other applicable ACJA sections state otherwise. The board chair may call additional regular meetings at the discretion of the board chair.
- b. Emergency Meetings. The board chair may call emergency meetings of the board upon a showing of good cause, including consideration of the emergency suspension of a certificate pursuant to subsection (H)(5)(c)(6).
- c. Public Notice. All meetings shall be publicly noticed and open to the public, in compliance with ACJA § 1-202.

### 5. Actions.

- a. Voting. A majority of the votes shall decide motions arising at any meeting of the board. All members may vote on any motion. All votes shall be taken by voice vote,

signified by “aye” or “nay.” Any board member may require a recorded vote, to include the number of “ayes” or “nays” and the specific vote of the member requesting the recorded vote. In the case of an equality of votes the motion is defeated. A declaration by the chair a motion has carried and an entry to that effect in the minutes is admissible in evidence as prima facie proof of the fact without proof of the number or proportion of the votes recorded in favor of or against such resolution being necessary.

- b. Recusal. A member shall recuse from discussing and voting on an issue pertaining to an applicant or certificate holder who is related to the member or in any other situations where there is a conflict of interest, or may be the appearance of a conflict of interest.

(1) For the purposes of this subsection:

- (a) “related” includes the relationships of parent, child, sibling, spouse or cohabitant;
  - (b) “conflict of interest” includes situations where the member has a direct or indirect substantial interest in any contract, sale, purchase or service to the board or the AOC or who has, or whose relative has, a substantial interest in any decision of the board, or the existence of any situation where there is, or may be an appearance that the relationship is one that would affect the member’s ability to be impartial. The fact a member or the entire board has been named in a lawsuit by an applicant or certificate holder does not automatically constitute a conflict of interest requiring the recusal of the member in an issue relating to the applicant or certificate holder.
- (2) The purpose of this recusal provision is to remove or limit the possibility of personal influence which might bear upon a member’s official decision, or provide the appearance of any impropriety in the member’s decision.
  - (3) A member may seek legal advice regarding specific conflicts of interest or other ethical issues pertaining to membership and action from the AOC legal counsel.
  - (4) The member shall recuse at the beginning of the discussion of the issue by the board, or at the first instance the member realizes the conflict. The member shall not participate in the discussion by the board and shall leave the meeting room during board discussion of the issue in executive session. The recusal shall be noted in the official minutes of the meeting.

- c. A member shall not designate a proxy for attendance or voting.

- 6. Staff. Under the direction of the chief justice, the director shall provide staff to assist and support the board and may conduct or coordinate research as recommended by the board.

7. Communications.

- a. Board members shall not engage in improper ex parte communications with a hearing officer, other board members or division staff as to the merits of a case regarding an individual or business entity application for certification or a complaint alleging acts or misconduct or violations of statutes, court rules, or the ACJA that have been filed against a certificate holder. Except as may be provided in the applicable sections of the ACJA, all communications among a board member, division staff or a hearing officer in these situations shall occur during board meetings.

- b. AOC legal counsel shall provide legal advice for the board. The Office of the Arizona Attorney General provides legal representation to the board as an entity or individual member, consistent with the Arizona constitution and statutes. AOC legal counsel shall coordinate with the Attorney General for representation.
- c. Board members shall not engage in ex parte communications with applicants for certification or certificate holders regarding the board's action or potential action. Members shall not engage in ex parte communications with any other person, including the attorney of record of an applicant or certificate holder.
- d. Board members should refer all contacts from the media to the AOC public information officer.
- e. Board members shall maintain the confidentiality of all information provided to the board during confidential executive sessions of the board and other documents that are confidential pursuant to court rules or law.
- f. Board members should always be cognizant they are seen as representatives of the board and the program at professional gatherings and in public settings, including for example, at the legislature. Board members should not speak for the board unless specifically authorized to do so. A board member shall make the following statement, either verbally or in writing, or both, "the views and opinions expressed are my own and do not represent the views or opinion of the board, the AOC or the Arizona Supreme Court."
- g. Board members shall refer inquiries from the public, certificate holders, applicants for certification and other governmental and private entities regarding matters within the board's jurisdiction to division staff. Division staff, in coordination with the board chair, shall refer appropriate issues to the full board at a regularly scheduled board meeting.
- h. These provisions apply to all forms of communication, including verbal, written and electronic.

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 7: Administrative Office of the Courts**  
**Chapter 2: Certification and Licensing Programs**  
**Section 7-202: Fiduciaries**

**A. Definitions.** In addition to the Arizona Code of Judicial Administration (ACJA) § 7-201(A), the following definitions apply:

“Active and direct supervision” means “supervision by a licensed fiduciary or designated principal who provides or exercises routine and regular control over the services of and assumes personal professional oversight and responsibility for the services of other licensed fiduciaries and certified and licensed professionals, trainees, and support staff to whom the licensed fiduciary delegates non-informed consent and non-contract entering authority. Active and direct supervision does not require a principal’s constant physical presence if the supervising principal is or can be easily in contact with the fiduciary, trainee, or staff by radio, telephone, or electronic communication.”

“Conservator” means “a person who is appointed by a court to manage the estate of a protected person” as provided in A.R.S. § 14-1201(9).

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

“Devise” means “when used as a noun, ... a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will” as provided in A.R.S. § 14-1201(13).

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

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

...

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

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

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

(d) The department of veterans’ services.

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

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

“Foreign personal representative” means “a personal representative appointed by another jurisdiction” as provided in A.R.S. § 14-1201(20).

“Guardian” means “a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes a person who is merely a guardian ad litem” as provided in A.R.S. § 14-1201(23).

“Guardian ad litem” means “a person who is appointed pursuant to § 14-1408 as provided in A.R.S. § 14-1201(24).

“Personal representative” means “Personal representative includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status. A general personal representative excludes a special administrator” as provided in A.R.S. § 14-1201(40).

“Program coordinator” means “division staff” as provided in ACJA § 7-201(A).

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

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

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

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

“Trainee” means a person who would qualify for licensure as a fiduciary but for the lack of required experience and who is seeking to gain the required experience to qualify as a licensed fiduciary by working under the active and direct supervision of a designated principal or licensed fiduciary to perform authorized services, pursuant to this section.

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

## **B. Applicability**

...

**C. Purpose**

...

**D. Administration.**

...

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

1. Eligibility for Licensure as an Individual.

a. A.R.S. § 14-5651 provides:

C. An applicant for licensure must:

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

....

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

b. In addition, the applicant shall possess one of the following:

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

- (a) Under the supervision of a licensed fiduciary;
- (b) Under the supervision of a bank trust or trust company officer; or

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

- (a) Under the supervision of a licensed fiduciary;
  - (b) Under the supervision of a bank trust or trust company officer; or
  - (c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;
- (5) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and a certificate of completion from a paralegal or fiduciary program approved by the American Bar Association. In addition, the applicant shall have a minimum of two years of work experience within the previous ten years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship, or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship or conservatorship in one or a combination of the following circumstances:
- (a) Under the supervision of a licensed fiduciary;
  - (b) Under the supervision of a bank trust or trust company officer; or
  - (c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health or disability law;
- (6) A juris doctorate degree from a law school accredited by the American Bar Association and currently admitted to the practice of law, active and in good standing in the state in which the applicant was admitted;
- (7) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and appointment as a foreign fiduciary where the fiduciary served pursuant to a court order. In addition, the applicant shall have a minimum of three years of work experience specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship, or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship, or conservatorship; or
- (8) A high school diploma or a general equivalency diploma evidencing the passing of the general education development test and a registered master guardian certification in good standing with the National Guardianship Association.
- (9) Upon review, and for good cause, the board may waive the requirement that an applicant's experience has been completed within the ten year period prior to the application, pursuant to subsection E(1)(b)(1), or within the five year period prior to the application, pursuant to subsection E(1)(b)(2); however, the board may not waive or reduce the required number of years of experience required to become licensed.
- c. The applicant shall take and pass a written examination testing the applicant's knowledge and minimum competencies to serve as a fiduciary.

- d. On successfully passing the examination, the applicant shall attend and complete a session on the role and responsibilities of the licensed professional fiduciary as provided by division staff.
  - e. The applicant shall have 90 days from the date of passing the examination or reexamination to complete the licensure process. Division staff shall treat an applicant who does not complete the process within 90 days as a new applicant and require the applicant to submit a new application and pay all initial licensure, examination and training fees.
2. Eligibility for Trainee. An individual working under the supervision of a licensed fiduciary or designated principal in order to gain the required experience to become licensed as a fiduciary may:
- a. Register as a trainee by completing and submitting a form provided by division staff.
  - b. Pay a registration fee pursuant to subsection (K). This fee shall cover the cost of trainee registration and one administration of the examination but does not include the fingerprint fee required pursuant to subsection (K).
  - c. Comply with the fingerprint provisions pursuant to A.R.S. § 14-5651(B) and subsection (E)(4)(a).
  - d. Comply with the continuing education provisions pursuant to subsections (G)(2) and (L).
  - e. Upon meeting the eligibility requirements for licensure, a trainee shall submit an application for individual licensure.
3. Licensure as a Business Entity, Arizona Department of Veterans' Services or Office of the Public Fiduciary.
- a. Business Entity. For qualification for business entity licensure, the corporation, limited liability company or partnership shall designate a principal who meets the requirements of subsection (E)(3)(e).
  - b. Arizona Department of Veterans' Services. For qualification for licensure the department director shall designate a principal who meets the requirements of subsection (E)(3)(e).
  - c. Office of the Public Fiduciary. For qualification for licensure the office shall designate a principal who meets the requirements of subsection (E)(3)(e) and who is the named public fiduciary for the county.
  - d. Designation and Replacement of Principal.
    - (1) The initial application for licensure shall name the designated principal.
    - (2) If the designated principal is no longer willing or able to serve as the principal:
      - (a) The licensed business entity shall supply division staff with the name of the new designated principal within fourteen days. The licensed business entity shall file the

executed principal form with division staff naming the new principal within 30 days after the designated principal provided notice to the licensed business entity the designated principal is no longer willing or able to serve. The licensed business entity shall ensure the new designated principal meets the requirements of subsection (E)(3)(e).

(b) The Department of Veterans' Services shall supply division staff with the name of the new designated principal within fourteen days. The department shall file the executed principal form with division staff naming the new principal within 30 days after the designated principal provided notice to the department the principal is no longer willing or able to serve. The department shall ensure the new designated principal meets the requirements of subsection (E)(3)(e).

(c) The Office of the Public Fiduciary shall supply division staff with the name of the new designated principal within fourteen days. The office shall file the executed principal form with division staff naming the new principal within 30 days after the designated principal provided notice to the county board of supervisors the principal is no longer willing or able to serve. The office shall ensure the new designated principal meets the requirements of subsection (E)(3)(e).

(d) Short term vacations or illnesses are not examples of inability to serve.

e. Eligibility of Principal. To qualify as the designated principal of a licensed fiduciary business entity, the Department of Veterans' Services or the Office of the Public Fiduciary, a licensed fiduciary shall meet the following requirements:

(1) Hold a valid, active license as a fiduciary whose license has not been previously suspended or revoked;

(2) Comply with the renewal requirements for licensure.

f. Responsibilities of Principal.

(1) The principal shall:

(a) Provide active and direct supervision of all other licensed fiduciaries, trainees, and support staff who work with wards, protected persons, or decedent estates and who work for the corporation, limited liability company, or partnership, Department of Veterans' Services, or Office of the Public Fiduciary;

(b) Adopt policies and procedures giving reasonable assurance that all licensed fiduciaries and trainees conform to the applicable rules, statutes and sections of the ACJA and that non-licensed staff conduct themselves in accordance with the applicable rules, statutes, and sections of the ACJA.

(c) In compliance with subsections F and J, delegate and assume personal professional responsibility for ensuring the tasks performed by the licensed fiduciaries, professionals, support staff, and others who provide services for wards, protected persons, or decedent estates are within the scope of their training and experience and have been delegated by the principal.

- (d) File a list of all licensed fiduciaries and trainees acting for or on behalf of the business entity, department, or office with the initial application.
  - (e) File articles of incorporation and letters of good standing from the Arizona Corporation Commission or the Secretary of State with an initial application for licensure of a business entity.
  - (f) Agree that at least one licensed fiduciary shall assume the primary responsibility for each court appointment as a guardian, conservator or personal representative.
  - (g) File with the division staff, by June 30 each year, a list of all licensed fiduciaries and trainees acting for or on behalf of the business entity, department, or office.
- (2) The designated principal may represent the business entity or public fiduciary office in any proceeding under this section or ACJA § 7-201. The director of the Department of Veterans' Services or designated principal may represent the department in any proceeding under this section or ACJA § 7-201.
4. Procedures for Initial Licensure. In addition to the requirements of ACJA § 7-201(E), applicants shall meet the following requirements:

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

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

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

c. A.R.S. § 14-5651(D) specifies the purpose of the bond:

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

d. This bond is separate from the requirements of A.R.S. §§ 14-5411(A) and 14-3603(A). A.R.S. § 14-5411(A) provides: "Except as otherwise provided in subsection B, the

court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties according to law, with sureties as it shall specify . . . .” A.R.S § 14-3603(A) provides:

A bond is required of a personal representative unless either:

1. The will expressly waives the bond.
  2. All of the heirs if no will has been probated, or all of the devisees under a will which does not provide for waiver of the bond, file with the court a written waiver of the bond requirement. A duly appointed guardian or conservator may waive on behalf of his ward or protected person unless the guardian or conservator is the personal representative.
  3. The personal representative is a national banking association, a holder of a banking permit under the laws of this state, a savings and loan association authorized to conduct trust business in this state, a title insurance company which is qualified to do business under the laws of this state, a trust company holding a certificate to engage in trust business from the superintendent of financial institutions or the public fiduciary.
  4. The petition for formal or informal appointment alleges that the probable value of the entire estate will permit summary procedures under § 14-3973 and the surviving spouse, or the nominee of the surviving spouse, is applying for appointment as personal representative.
- e. For initial licensure the applicant shall file with the application a cash or surety bond for the purposes described in A.R.S. § 14-5651(D) and subsection (E)(4)(b). Upon licensure the licensee shall maintain the cash or surety bond as long as the licensure is in place. Upon expiration or surrender of the licensure, the licensee may apply in writing to division staff for return of any cash bond not forfeited. Division staff shall return any cash bond not forfeited within 120 days.
- f. A bond may be either a surety or cash bond as follows:
- (1) A surety bond in favor of the state of Arizona and the supreme court. The applicant shall have the bond executed on an approved bond form and issued by an insurer authorized to do business in Arizona and holding a certificate of authority issued by the director of the Arizona Department of Insurance. The bond shall have a total aggregate liability of \$10,000 and shall contain a provision the insurer shall not cancel the bond without at least 30 days prior written notice to the supreme court by the insurer.
  - (2) A cash bond in the amount of \$10,000 for deposit with the state treasurer in a special non-interest bearing account.
  - (3) If the applicant is found by the board to have violated any section adopted pursuant to A.R.S. § 14-5651, the board may cause the forfeiture of the cash or surety bond, as applicable, to the supreme court. If the bond is forfeited, division staff shall deposit the

funds in the confidential intermediary and fiduciary fund established pursuant to A.R.S. § 8-135.

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

## 5. Exemptions from Licensure.

### a. Licensure is not required of:

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

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

### c. Emergency Exemption. Any person or business entity seeking court appointment as a conservator, guardian, or personal representative may apply on the form prescribed by the supreme court for an emergency exemption from licensure based on the criteria set forth in this section and comply with this section by filing an application for exemption, on the approved form, with the clerk of the superior court in the county where the appointment is requested. For good cause shown, the presiding judge of the superior court or designated judicial officer may grant or deny the exemption under the following conditions:

- (1) The presiding judge or designated judicial officer finds the applicant possesses the experience, education, and skills necessary to meet the needs of the ward, protected

person, or decedent's estate. In making this determination, the presiding judge or designated judicial officer may consider the following:

- (a) The nature of the relationship with the ward, protected person, or deceased person;
  - (b) The type of decisions the fiduciary may make;
  - (c) The amount of assets the fiduciary shall manage;
  - (d) Any limitations or conditions on the appointment;
  - (e) The estimated cost of the fiduciary and associated professional fees the fiduciary shall charge;
  - (f) The applicant is not acting as a fiduciary in any other case unless related to the ward or protected person by blood or marriage;
  - (g) The applicant has known the ward, protected person, or deceased person for at least two years;
  - (h) No prejudice or harm is likely to occur if the exemption is granted;
  - (i) There is an emergency need for the temporary appointment;
  - (j) No relative is willing and able to serve; and
  - (k) No licensed fiduciary is willing and able to serve.
- (2) The presiding judge or designated judicial officer may hold a hearing or request additional information in order to make any required finding.
- (3) If the presiding judge or designated judicial officer enters an order granting an exemption the following restrictions shall apply:
- (a) Temporary appointment is effective for a period of up to 90 days. The presiding judge may grant one extension for a period of up to 90 days. The purpose of the temporary appointment is to allow the individual to seek and obtain licensure during this temporary appointment;
  - (b) The appointee shall apply for fiduciary licensure with the supreme court; and
  - (c) The appointee shall not receive any compensation in any form while the appointee is serving in the capacity of an emergency exempted fiduciary, except for reimbursement for reasonable expenses, subject to court approval.
- (4) Within fifteen days of granting the exemption from licensure, the presiding judge or designated judicial officer shall forward to division staff a copy of the application for exemption, the petition and order granting the emergency appointment of guardian or conservator and the minute entry.

6. Decision Regarding Licensure. In addition to the reasons specified in ACJA § 7-201(E), an applicant:
  - a. May be denied licensure:
    - (1) If the applicant or an officer, director, partner, member, trustee, or manager of the applicant was removed as a court appointed guardian, conservator, or personal representative for cause;
    - (2) If an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony.
  - b. Shall be denied licensure if the applicant has a record of conviction by final judgment of a felony pursuant to A.R.S. § 14-5651(C)(3).

**F. Role and Responsibilities of Fiduciaries.**

...

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

1. Expiration Date. All licenses expire at midnight on May 31st each even numbered year.
2. Continuing Education. During each renewal cycle, all licensed fiduciaries and trainees shall attend twenty hours of continuing education as required by the continuing education policies in subsection (L).
3. All business applicants shall include a letter of good standing from the Arizona Corporation Commission or Arizona Secretary of State with the application for renewal of licensure.
4. Decision Regarding Renewal. In addition to the reasons specified in ACJA § 7-201(G), an applicant:
  - a. May be denied renewal of licensure:
    - (1) If the applicant or an officer, director, partner, member, trustee, or manager of the applicant was removed as a court appointed guardian, conservator, or personal representative for cause or;
    - (2) The court issued an order or sanction against the fiduciary on a finding of contempt or breach of fiduciary duty regarding the administration of a guardianship conservatorship, or personal representative, including civil arrests warrants. Fiduciary arrest warrants, or a court finding that the fiduciary engaged in vexatious conduct.
    - (3) If an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony.
  - b. Shall be denied renewal of licensure if the applicant has a record of conviction by final judgment of a felony pursuant to A.R.S. § 14-5651(C)(3).

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

1. Reporting of Complaints. A.R.S. § 14-5651 provides:

E. A person who in good faith provides information or testimony regarding a fiduciary's misconduct or lack of professionalism is not subject to civil liability.

F. Persons appointed by the chief justice to serve in an advisory capacity to the fiduciary program, staff of the fiduciary program, hearing officers and employees of the administrative office of the courts who participate in the fiduciary program are immune from civil liability for conduct in good faith that relates to their official duties.

2. Possible Actions. Upon completion of an investigation concerning alleged acts of misconduct or violations by a licensee, which may or may not involve a hearing, the board may, in addition to any other actions specified in ACJA § 7-201(H):

a. Require the licensee to forfeit the surety or cash bond or forfeit the surety or cash bond to the extent necessary to compensate the court for the investigation and hearing process if applicable.

b. Determine and impose a civil penalty, pursuant to A.R.S. § 14-5651(D). The civil penalty may not exceed \$500 for each failure or violation and may not exceed an aggregate civil penalty of \$15,000. The licensed fiduciary shall pay the civil penalty to the supreme court for remission to the state treasurer for deposit in the general fund.

3. Judicial Review. In addition to the requirements in ACJA § 7-201(H), the following requirements apply: A.R.S. § 14-5651(H) provides: "This section does not grant any fiduciary or any applicant for a license as a fiduciary the right to a direct appeal to the supreme court."

**I. Policies and Procedures for Board Members.**

...

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

1. Duty to the Court.

a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.

b. The fiduciary shall not act outside of the authority granted by the court and shall seek direction from the court as necessary and court authorization for actions that are subject to court approval. The fiduciary shall clarify with the court any questions about the meaning of a court order or directions from the court before taking action based on the order or

directions. If the fiduciary is aware of a court order that may conflict with this ACJA section, the fiduciary shall bring the possible conflict to the attention of the court and seek the court's direction.

c. The fiduciary shall:

- (1) Inform the court, pursuant to the *Arizona Rules of Probate Procedure*, of a permanent change in the location, or upon the death, of a ward or protected person.
- (2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;
- (3) Not knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts; and
- (4) Not knowingly interfere with the transmission of a request to the court:
  - (a) From the ward for an order that the ward is no longer incapacitated;
  - (b) From the protected person for an order that the protected person is no longer in need of protection;
  - (c) From the ward or protected person for substitution of the fiduciary.

d. Authorized Services. Pursuant to Rule 31(d)(30), *Arizona Rules of the Supreme Court*, unless otherwise ordered by the court, a licensed fiduciary or a licensed fiduciary on behalf of a licensed fiduciary entity:

- (1) Is authorized to prepare and file with the court the following documents, without the supervision of an attorney:
  - (a) Court investigation reports, if the fiduciary has been appointed as a court investigator pursuant to A.R.S. §§ 14-5303, 14-5407 or 36-540;
  - (b) Probate information forms pursuant to Rule 10, *Arizona Rules of Probate Procedure*;
  - (c) Amendments to probate information forms, pursuant to Rule 10(C) *Arizona Rules of Probate Procedure*, including notices of change of address and notice of death or the ward or protected person;
  - (d) Notice of the basis of compensation pursuant to A.R.S. § 14-5109 and Rule 33, *Arizona Rules of Probate Procedure*;
  - (e) Guardian reports pursuant to A.R.S. § 14-5315; Rule 30, *Arizona Rules of Probate Procedure* and ACJA § 3-302;

- (f) Inventory of conservatorship pursuant to A.R.S. § 14-5418; Rules 30 and 31, *Arizona Rules Probate Procedure*; and ACJA § 3-302;
  - (g) The protected person's consumer credit report that is filed with the inventory, *pursuant to A.R.S. § 14-5418*;
  - (h) Conservatorship estate budget pursuant to Rule 30.3, *Arizona Rules of Probate Procedure* and ACJA § 3-302;
  - (i) Petition for Approval of Conservator Account and the required notices and the conservator account; pursuant to A.R.S. § 14-5419, Rule 30.3, *Arizona Rules of Probate Procedure*; and ACJA § 3-302. This authority does not include the preparation and filing of documents in contested probate proceedings pursuant to Rule 27, *Arizona Rules of Probate Proceeding*, when an objection is made to the Petition for Approval of Conservator Account;
  - (j) Proof of restricted account, pursuant to Rule 22(C)(3), *Arizona Rules of Probate Procedure*;
  - (k) Notices to creditors;
  - (l) Status reports;
  - (m) Reports to the court of abuse, neglect, or exploitation of a vulnerable adult pursuant to A.R.S. § 46-454 et seq;
  - (n) A copy of the recorded letters the conservator is required to file with the court pursuant to Rule 26(E), *Arizona Rules of Probate Procedure*;
  - (o) Proofs of publication, notice, or mailings associated with the above filings; and
  - (p) Fiduciary bond.
- (2) May provide general legal information to the ward, protected person and persons entitled to notice, pertaining to legal rights, procedures, or options available to the ward or protected person in a legal matter.
  - (3) Shall not provide any legal advice, opinion, or recommendation about possible legal rights, remedies, defenses, options, or strategies.
  - (4) May attend court hearings, including the initial appointment hearing for appointment of guardian, or any appearance hearing at which the fiduciary may be requested to provide testimony or the appearance of the fiduciary is necessary to further the client's best interests.
  - (5) Shall not represent that the fiduciary is authorized to practice law in this state, nor shall the fiduciary provide legal services to another by representing another in a judicial, quasi-judicial or administrative proceeding, or other formal dispute resolution process, except as authorized by Rule 31, Rules of the Supreme Court.

Notwithstanding these provisions, a fiduciary may attend court with a ward or protected person and may provide general legal information pursuant to subsection J(1)(d)(2).

- (6) Shall abide by any order entered pursuant to Rule 31, *Arizona Rules of the Supreme Court* and Rule 10(G), *Arizona Rules of Probate Procedure*, where the court orders that a licensed fiduciary shall obtain the court's permission to file future pleadings and other papers in a case or other cases if the court enters an order the fiduciary engaged in vexatious conduct in connection with a probate case.
  - (7) May not perform functions listed in J(1)(d) if the court has suspended the fiduciary's authority to act pursuant to Rule 31(d)(3) which provides: "A person licensed as a fiduciary pursuant to A.R.S. § 14-5651 may perform services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-202. Notwithstanding the foregoing provision, the court may suspend the fiduciary's authority to act without an attorney whenever it determines that lay representation is interfering with the orderly progress of the proceedings or imposing undue burdens on other parties."
  - (8) Shall inform the ward, protected person, and persons entitled to receive notice that the fiduciary is not a lawyer, is not employed by a lawyer, and cannot give legal advice, and that communications with a fiduciary are not privileged. A fiduciary shall not use the designations "lawyer," "attorney at law," "counselor at law," "law office," "JD," "Esq.," or other equivalent words, the use of which is reasonably likely to induce others to believe the fiduciary is authorized to engage in the practice of law in the State of Arizona, unless the fiduciary has been admitted to the practice of law in Arizona and is an active member of the State Bar of Arizona.
  - (9) May only prepare powers of attorney or other legal documents if also certified as a legal document preparer pursuant to ACJA § 7-208, except as provided in subsection J(d)(1) or as otherwise ordered by the court. This provision does not apply to the Arizona Department of Veteran's Services pursuant to A.R.S. § 41-603(A).
2. Relationship with the Ward or Protected Person. The fiduciary shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate.
- a. The fiduciary shall manage and protect the personal and monetary interests of the ward or protected person and foster growth, independence and self reliance to the maximum degree.
  - b. The fiduciary shall:
    - (1) Avoid self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest or impropriety. Self-dealing, a conflict of interest, or impropriety arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent. A conflict of interest may also arise if the fiduciary has dual or multiple relationships with a ward that conflict with each other or has a conflict between or among the best interests of two or more wards.

- (2) Maintain independence from all service providers to enable the fiduciary to coordinate services, challenge inappropriate or poorly delivered services, and act in the best interests of the ward or protected person.
  - (3) Unless otherwise authorized by the court, the fiduciary shall not:
    - (a) Provide non-fiduciary services to the ward or protected person if the fiduciary or a person or entity closely related to the fiduciary has a personal or financial interest. For the purposes of this subsection, “closely related” includes a spouse, child, parent, sibling, grandparent, aunt, uncle, or cousin of the fiduciary, and any business, partnership, corporation, limited liability company, trust, or other entity that the fiduciary or a closely related person has a financial interest in, is employed by, or receives compensation or financial benefit from.
    - (b) Solicit or accept incentives or gifts from service providers other than ordinary social hospitality; or
    - (c) Solicit or accept a gift from a ward or protected person or the estate of a ward or protected person, other than ordinary social hospitality.
  - (4) Upon becoming aware of a conflict of interest, immediately disclose to the court the existence and nature of the conflict.
  - (5) In those exceptional situations when no other services are available, seek court approval before providing direct services. When requesting court approval, the fiduciary shall demonstrate in writing and with prior notice to parties entitled to notice that all alternatives have been identified and considered and that no alternative is available that is reasonable or practical. This does not apply in an emergency situation where it is necessary for the fiduciary to provide services, to protect the best interests of the ward or protected person. The fiduciary shall document the emergency and the need for the fiduciary to provide the services.
  - (6) The fiduciary shall maintain a professional relationship with the ward or protected person and shall avoid personal relationships with the ward and protected person or the family or friends of the ward or protected person, unless the fiduciary is a family member, or unless such a relationship existed before the appointment of the fiduciary.
- c. The fiduciary shall vigorously protect the rights of the ward or protected person against infringement by third parties.
  - d. The fiduciary shall, whenever possible, provide all pertinent information to the ward or protected person unless the fiduciary is reasonably certain substantial harm will result from providing this information. Pursuant to A.R.S. § 14-5651, the fiduciary shall, upon appointment as a guardian or conservator, provide “written information to the ward or protected person and all persons entitled to notice pursuant to § 14-5309 or 14-5405 that the fiduciary is licensed by the supreme court and subject to regulation by the supreme court.” This notice shall be in the form as prescribed by the supreme court, as specified in subsection F(4).

- e. The fiduciary shall not permit or authorize trainees, support staff, or other contracted professionals to provide informed consents or enter into any contractual agreements regarding the ward or protected persons.
3. Decision Making. The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.
- a. The fiduciary shall make all reasonable efforts to determine the preferences of the ward or protected person, both past and current, regarding all decisions the fiduciary is empowered to make.
  - b. The fiduciary shall make decisions in accordance with the determined preferences of the ward or protected person, past or current, in all instances except when the fiduciary is reasonably certain the decision will result in substantial harm.
  - c. When it is not possible to determine the preferences of the ward or protected person, the fiduciary shall make decisions in the best interest of the ward or protected person.
  - d. The fiduciary shall maintain an awareness of the limitations of the fiduciary's expertise, shall carefully consider the views and opinions of those involved in the treatment, care and management of the ward, protected person, or estate, and shall seek independent opinions when necessary.
  - e. The fiduciary shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Subject to orders of the court, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, protected person, or estate. The fiduciary shall maintain accurate and complete records to support the decisions made in the administration of a case, in compliance with court rules and the applicable sections of the Arizona Code of Judicial Administration.
  - f. The fiduciary shall refrain from decision making in areas outside the scope of the guardianship, conservatorship, or personal representative order.
4. Guardianship. The fiduciary acting as guardian shall assume legal custody of the ward and shall ensure the ward resides in the least restrictive environment available. The fiduciary or the fiduciary's qualified representative, if the ward is located outside the county or state, shall visit the ward no less than quarterly and as often as is necessary to ensure the client's well-being. The fiduciary shall assume responsibility to provide informed consent on behalf of the ward for the provision of care, treatment and services and shall ensure this care, treatment and services represent the least restrictive form of intervention available.
- a. On appointment, the fiduciary shall review and keep informed of the statutory requirements for a guardian.
  - b. The fiduciary shall stay informed and be aware of the options and alternatives available for establishing the ward's place of residence.

- c. The fiduciary shall make decisions in conformity with the preferences of the ward in establishing the residence of the ward unless the fiduciary is reasonably certain this decision will result in substantial harm.
- d. The fiduciary shall, when it is not possible to determine the preferences of the ward or where they will result in substantial harm, make decisions with respect to the place of abode of the ward that are in conformity with the best interests of the ward.
- e. The fiduciary shall not remove the ward from the home of the ward or separate the ward from family and friends unless this removal is necessary to prevent substantial harm or because of financial constraints. The fiduciary shall make every reasonable effort to ensure the ward resides at home or in a community setting.
- f. The fiduciary shall seek professional evaluations and assessments whenever necessary to determine if the current or proposed placement of the ward represents the least restrictive environment to the ward. The fiduciary shall work cooperatively with available community based organizations to assist in ensuring the ward resides in a non-institutional environment.
- g. The fiduciary shall monitor the placement of the ward on an on-going basis to ensure the continued appropriateness of the placement and shall consent to changes as they become necessary or advantageous for the ward.
- h. The fiduciary shall, if the only available placement is not the most appropriate and least restrictive, advocate for the rights of the ward, negotiate a more desirable placement with a minimum of delay and retain legal counsel for assistance if necessary.
- i. The fiduciary shall make decisions in conformity with the preferences of the ward when providing consent for the provision of care, treatment and services, unless the fiduciary is reasonably certain these decisions will result in substantial harm to the ward.
- j. When it is not possible to determine the preferences of the ward or the ward's preferences will result in substantial harm, the fiduciary shall make decisions with respect to care, treatment and services, in conformity with the best interests of the ward.
- k. In the event the only available treatment, care or services are not the most appropriate and least restrictive, the fiduciary shall advocate for the right of the ward to a more desirable form of treatment, care or services, retaining legal counsel to assist if necessary.
- l. The fiduciary shall seek professional evaluations and assessments whenever necessary to determine whether the current or proposed care, treatment and services represent the least restrictive form of intervention available.
- m. The fiduciary shall work cooperatively with available individuals and organizations ensure that the ward receives care, treatment and services representing the least restrictive form of intervention available and are consistent with the wishes or best interests of the ward.
- n. The fiduciary shall not consent to extraordinary medical procedures without prior authorization from the superior court. The procedures the fiduciary shall not consent to without prior court approval include abortion, sterilization, organ transplants, psycho

surgery, electro-convulsive therapy, medical treatment for clients whose religious beliefs prohibit these treatments and any other treatments or interventions the court must approve pursuant to state law.

- o. The fiduciary shall know and follow the laws of the state regarding the withholding or withdrawal of life-sustaining treatment.
  - p. The fiduciary shall regularly monitor the care, treatment, and services the ward is receiving to ensure their continued appropriateness and shall consent to changes as they become necessary or advantageous to the ward. The fiduciary or appropriate designee shall be available to respond to an urgent need for medical decisions. The fiduciary shall provide instructions regarding treatment or non-treatment by medical staff in emergencies.
  - q. The fiduciary shall ensure that the ward receives all medical and financial benefits to which the ward may be entitled.
  - r. The fiduciary shall protect and manage the monetary interests of the ward when acting in a *de facto* conservatorship, including not co-mingling funds and assets.
5. Conservatorship. The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.
- a. On appointment, the fiduciary shall review and be informed of the requirements specified in court rules and Arizona Statutes for managing a protected person's estate.
  - b. Pursuant to A.R.S. § 14-1104:
    - 1. The fiduciary must prudently manage costs, preserve the assets of the ward or protected person for the benefit of the ward or protected person and protect against incurring any costs that exceed probable benefits to the ward, protected person, decedent's estate or trust, except as otherwise directed by a governing instrument or court order.
    - 2. A guardian ad litem, fiduciary, fiduciary's attorney for the ward or protected person have a duty to:
      - (a) Act in the best interest of the ward or protected person.
      - (b) Avoid engaging in excessive or unproductive activities.
      - (c) Affirmatively assess the financial costs of pursuing any action compared to the reasonably expected benefit to the ward or protected person. . . .
    - 3. Market rates for goods and services are a proper, ongoing consideration for the fiduciary and the court during the initial court appointment of a fiduciary or attorney and relating to a request to substitute a court-appointed fiduciary or attorney.

- c. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the protected person's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.
  - d. The fiduciary shall not co-mingle any property or assets of the protected person's estate with property or assets of other clients' estates the fiduciary may hold as conservator or in another capacity, nor co-mingle with the fiduciary's own property or assets.
  - e. The fiduciary shall manage the income of the estate with the primary goal of providing for the needs of the protected person, and in certain cases, the needs of the dependents of the protected person for support and maintenance.
  - f. The fiduciary shall exercise prudence in the investment of surplus funds of the estate.
  - g. The fiduciary shall petition for and receive authority from the superior court before expending estate funds for gifting.
  - h. The fiduciary shall have no self-interest in the management of the estate and shall exercise caution to avoid even the appearance of self-interest.
  - i. The fiduciary shall ensure the protected person receives all medical and financial benefits to which the protected person may be entitled.
  - j. The fiduciary shall ensure that all fees and expenses incurred for the protected person by the fiduciary, including compensation for the services of the fiduciary, are reasonable in amount, necessarily incurred for the welfare of the protected person, and in compliance with ACJA § 3-303.
  - k. The fiduciary shall prepare complete, accurate and understandable accounts and inventories.
  - l. The fiduciary shall protect the rights and make decisions in the best interest of the protected person when acting in a *de facto* guardianship.
  - m. Unless otherwise ordered by the court, the fiduciary shall provide timely access to and copies of documents associated with the conservator's annual account, as specified in A.R.S. § 14-5418(C).
6. Personal Representative. A fiduciary acting as personal representative shall settle and distribute the estate of the decedent efficiently, timely, and in the best interests of the estate and, if appropriate, in accordance with the terms of any probated and effective will.
- a. On appointment, the fiduciary shall review and be informed of the statutory requirements for managing a decedent's estate.
  - b. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the decedent's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.

- c. The fiduciary shall not co-mingle any property or assets of the decedent's estate with property or assets of other estates the fiduciary may hold as personal representative, or co-mingle with the fiduciary's own property or assets.
  - d. A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees.
  - e. A fiduciary shall resolve questions in good faith and make decisions that are most beneficial to the estate.
  - f. A fiduciary shall have no self-interest in the management of the decedent's estate and shall exercise caution to avoid even the appearance of self-interest.
  - g. A fiduciary shall ensure that all fees and expenses for the estate, including compensation for the fiduciary, are reasonable in amount and necessarily incurred in the administration of the decedent's estate.
  - h. A fiduciary acting as personal representative shall prepare complete, accurate and understandable court documents, including, but not limited to, petitions for determination of heirs, inventories, accounts, and closing statements.
7. Trustee and Power of Attorney. A licensed fiduciary who is acting as a trustee or agent under a power of attorney shall abide by this code of conduct, regardless of whether that person is acting pursuant to court appointment.
8. Changes of Circumstances, Limitation, and Termination. The fiduciary has an affirmative obligation to be alert to changes in the ward's or protected person's condition or circumstances, report to the court when an increase or reduction in the authority of the fiduciary should be considered, and seek termination or limitation of the guardianship or conservatorship when indicated.
- a. The fiduciary shall diligently seek out information to provide a basis for termination or limitation of the guardianship or conservatorship.
  - b. The fiduciary, upon indication of termination or limitation of the guardianship or conservatorship order is warranted, shall promptly request court action, retaining legal counsel if necessary.
  - c. The fiduciary shall assist the ward or protected person in termination or limiting the guardianship or conservatorship and arrange for independent representation for the ward whenever necessary.

# ARIZONA REVISED STATUTES

## 14-1201. Definitions

In this title, unless the context otherwise requires:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, a person who is authorized to make decisions concerning another person's health care and a person who is authorized to make decisions for another person under a natural death act.
2. "Application" means a written request to the registrar for an order of informal probate or appointment under chapter 3, article 3 of this title.
3. "Basis for compensation" means an hourly rate, a fixed fee or a contingency fee agreement and reimbursable costs.
4. "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and includes the owner of an interest by assignment or other transfer. As it relates to a charitable trust, beneficiary includes any person entitled to enforce the trust. As it relates to a beneficiary of a beneficiary designation, beneficiary refers to a beneficiary of an insurance or annuity policy, an account with pay on death designation, a security registered in beneficiary form or a pension, profit sharing, retirement or similar benefit plan, or any other nonprobate transfer at death. As it relates to a beneficiary designated in a governing instrument, beneficiary includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee or taker in default of a power of appointment and a person in whose favor a power of attorney or a power held in any person, fiduciary or representative capacity is exercised.
5. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with pay on death designation, of a security registered in beneficiary form or of a pension, profit sharing, retirement or similar benefit plan, or any other nonprobate transfer at death.
6. "Certified paper original" means a tangible medium that contains both the text of an electronic will and any self-proving affidavit concerning the electronic will and that is accompanied by an affidavit that is executed pursuant to section 14-2523.
7. "Child" includes a person who is entitled to take as a child under this title by intestate succession from the parent whose relationship is involved. Child excludes a person who is only a stepchild, a foster child, a grandchild or a more remote descendant.
8. "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or the protected person, whether arising in contract, in tort or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. Claims do not include estate or inheritance taxes or demands or disputes

regarding title of a decedent or a protected person to specific assets alleged to be included in the estate.

9. "Community property" means that property of a husband and wife that is acquired during the marriage and that is community property as prescribed in section 25-211.
10. "Conservator" means a person who is appointed by a court to manage the estate of a protected person.
11. "Court" means the superior court.
12. "Dependent child" means a minor child whom the decedent was obligated to support or an adult child who was in fact being supported by the decedent at the time of the decedent's death.
13. "Descendant" means all of the decedent's descendants of all generations, with the relationship of parent and child at each generation.
14. "Devise", when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.
15. "Devisee" means a person designated in a will to receive a devise. For the purposes of chapter 3 of this title, in the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.
16. "Disability" means cause for a protective order as described in section 14-5401.
17. "Distributee" means any person who has received property of a decedent from that person's personal representative other than as a creditor or purchaser. Distributee includes a testamentary trustee only to the extent of distributed assets or increment that remains in that person's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this paragraph, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.
18. "Electronic" means having electrical, digital, magnetic, optical, electromagnetic or similar capabilities.
19. "Electronic record" means a record that is created, generated, sent, communicated, received or stored by electronic means.
20. "Electronic signature" means an electronic method or process that does both of the following:
  - (a) Is attached to or logically associated with an electronic record and that is executed or adopted by a person with the intent to sign the electronic record.
  - (b) Uses a security procedure that allows a determination that the electronic signature

was all of the following:

- (i) Unique to the person using it.
- (ii) Capable of verification.
- (iii) Under the sole control of the person making the electronic signature.
- (iv) Linked to the electronic record to which the electronic signature relates in a manner so that if the electronic record is changed the electronic signature is invalidated.

- 21. "Electronic will" means a testamentary instrument that is executed and maintained on an electronic medium and that is executed in compliance with section 14-2518.
- 22. "Estate" includes the property of the decedent, trust or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration. As it relates to a spouse, the estate includes only the separate property and the share of the community property belonging to the decedent or person whose affairs are subject to this title.
- 23. "Exempt property" means that property of a decedent's estate that is described in section 14-2403.
- 24. "Fiduciary" includes a personal representative, guardian, conservator and trustee.
- 25. "Foreign personal representative" means a personal representative who is appointed by another jurisdiction.
- 26. "Formal proceedings" means proceedings that are conducted before a judge with notice to interested persons.
- 27. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with pay on death designation, security registered in beneficiary form, pension, profit sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney or a dispositive, appointive or nominative instrument of any similar type.
- 28. "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes a person who is merely a guardian ad litem.
- 29. "Guardian ad litem" includes a person who is appointed pursuant to section 14-1408.
- 30. "Heirs", except as controlled by section 14-2711, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.
- 31. "Incapacitated person" has the same meaning prescribed in section 14-5101.

32. "Informal proceedings" means those proceedings conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.
33. "Interested person" includes any trustee, heir, devisee, child, spouse, creditor, beneficiary, person holding a power of appointment and other person who has a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. Interested person also includes a person who has priority for appointment as personal representative and other fiduciaries representing interested persons. Interested person, as the term relates to particular persons, may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.
34. "Issue" of a person means descendant as defined in this section.
35. "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.
36. "Lease" includes any oil, gas or other mineral lease.
37. "Letters" includes letters testamentary, letters of guardianship, letters of administration and letters of conservatorship.
38. "Minor" means a person who is under eighteen years of age.
39. "Mortgage" means any conveyance, agreement or arrangement in which property is encumbered or used as security. Mortgage does not include leases or easements.
40. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of the decedent's death.
41. "Organization" means a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency or any other legal or commercial entity.
42. "Original will" means either an original paper will or a certified paper original of an electronic will.
43. "Paper will" means a testamentary instrument that is executed and maintained on a tangible medium and that is executed in compliance with section 14-2502 or 14-2503.
44. "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent or grandparent.
45. "Payor" means a trustee, insurer, business entity, employer, government, governmental

agency or subdivision or any other person who is authorized or obligated by law or a governing instrument to make payments.

46. "Person" means an individual or an organization.
47. "Personal representative" includes an executor, an administrator, a successor personal representative, a special administrator and persons who perform substantially the same function under the law governing their status. A general personal representative excludes a special administrator.
48. "Petition" means a written request to the court for an order after notice.
49. "Proceeding" includes action at law and suit in equity.
50. "Property" has the same meaning prescribed in section 14-10103.
51. "Protected person" has the same meaning prescribed in section 14-5101.
52. "Protective proceeding" has the same meaning prescribed in section 14-5101.
53. "Qualified custodian" means a person who fulfills the requirements of section 14-2520.
54. "Registrar" means the official of the court who is designated to perform the functions of registrar as provided in section 14-1307.
55. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under that title or lease, collateral trust certificate, transferable share or voting trust certificate and, in general, includes any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of these securities.
56. "Separate property" means that property of a husband or wife that is the spouse's separate property as defined in section 25-213.
57. "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution and closing.
58. "Special administrator" means a personal representative as described by sections 14-3614 through 14-3618.
59. "State" has the same meaning prescribed in section 14-10103.
60. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
61. "Successors" means persons, other than creditors, who are entitled to property of a decedent under a will or this title.

62. "Supervised administration" refers to the proceedings described in chapter 3, article 5 of this title.
63. "Survive" means that a person has neither predeceased an event, including the death of another person, nor is deemed to have predeceased an event under section 14-2104 or 14-2702.
64. "Tangible medium" means a medium on which information may be inscribed by writing, typing, printing or similar means and that is perceivable by reading directly from the medium on which the information is inscribed.
65. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
66. "Testator" includes a person of either sex.
67. "Trust" includes an express trust, private or charitable, with any additions, wherever and however created. Trust also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust excludes other constructive trusts and excludes resulting trusts, conservatorship, personal representatives, trust accounts, custodial arrangements pursuant to chapter 7, article 7 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind, trusts created by a city or town for the payment of medical insurance, health care benefits or expenses, long-term or short-term disability, self insurance reserves and similar programs administered by a city or town, legal defense trusts and any arrangement under which a person is nominee or escrowee for another.
68. "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by the court.
69. "Ward" has the same meaning prescribed in section 14-5101.
70. "Will" includes a codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession. A will may be a paper will or an electronic will.

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

- A. If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given either:
  1. By mailing a copy thereof at least fourteen days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of

residence, if known.

2. By delivering a copy thereof to the person being notified personally at least fourteen days before the time set for the hearing.
  3. If the address or identity of any person is not known and cannot be ascertained with reasonable diligence, or when otherwise required under this title, by publishing at least three times prior to the date set for the hearing a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the first publication of which is to be at least fourteen days before the hearing.
- B. The court for good cause shown may provide for a different method or time of giving notice for any hearing.
- C. Proof of the giving of notice shall be made at or before the hearing and filed in the proceeding.

#### **14-1403. Pleadings**

In formal proceedings involving trusts or estates of decedents, minors, protected persons or incapacitated persons, interests to be affected must be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests or in some other appropriate manner.

#### **14-1408. Appointment of guardian ad litem**

At any point in a proceeding brought under this title, the court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn or unascertained person or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, the court may appoint a guardian ad litem to represent several persons or interests. In its order appointing the guardian ad litem, the court shall state the basis for the appointment.

#### **14-2101. Intestate estate; modification by will**

- A. Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this chapter, except as modified by the decedent's will.
- B. A decedent by will may expressly exclude or limit the right of a person or class to succeed to property of the decedent that passes by intestate succession. If that person or a member of that class survives the decedent, the share of the decedent's intestate estate to which that person or class would have succeeded passes as if that person or each member of that class had disclaimed that person's intestate share.

**14-2105. Unclaimed estate; passage to state**

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

**14-2501. Who may make a will**

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

**14-2502. Execution of paper wills; witnessed wills; holographic wills; testamentary intent**

- A. Except as provided in sections 14-2503, 14-2506 and 14-2513, a paper will shall be:
1. In writing.
  2. Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.
  3. Signed by at least two people, each of whom signed within a reasonable time after that person witnessed either the signing of the will as described in paragraph 2 of this subsection or the testator's acknowledgment of that signature or acknowledgment of the will.
- B. Intent that a tangible medium or an electronic record constitutes the testator's will can be established by extrinsic evidence, including, for holographic wills under section 14-2503, portions of the document that are not in the testator's handwriting.

**14-2503. Holographic will**

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

**14-2505. Witnesses; requirements; definition**

- A. A person who is generally competent to be a witness may act as a witness to a will.
- B. For any will executed on or after October 1, 2019, unless the will is made self-proved as prescribed in section 14-2504 or 14-2519, a person may not act as a witness to a will if that person is a devisee under that will or is related by blood, marriage or adoption to a devisee under that will.
- C. For the purposes of this section, "devisee" means a person who is designated in the will to receive a devise or who is a beneficiary of a trust that is designated in the will to receive a devise.

**14-2517. Penalty clause for contest; restriction**

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

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

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

**14-2606. Right to specific devises; unpaid proceeds of sale, condemnation or insurance; sale by conservator or agent**

- A. A specific devisee has a right to the specifically devised property in the testator's estate at death and to the following:
1. Any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property.
  2. Any amount of a condemnation award for the taking of the property unpaid at death.
  3. Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property.
  4. Property owned by the testator at death and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for a specifically devised obligation.
- B. If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal or if a condemnation award, insurance proceeds or recovery for injury to the property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds or the recovery. It is not necessary to adjudicate the issue of incapacity for an agent to act under this subsection. An agent's actions that are within the authority of a durable power of attorney are presumed to be on behalf of the incapacitated principal. For the purposes of this subsection, "incapacitated principal" means a principal who is an incapacitated person.
- C. The right of a specific devisee under subsection B is reduced by any right the devisee has under subsection A.
- D. The provisions in subsection B that relate to the actions of a conservator do not apply

if, after the sale, mortgage, condemnation, casualty or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.

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

- A. A nonvested property interest is invalid unless at least one of the following is true:
  - 1. At the time the interest is created it is certain to vest or to terminate not later than twenty-one years after the death of a person who is then alive.
  - 2. The interest either vests or terminates within five hundred years after its creation.
  - 3. The interest is under a trust whose trustee has the expressed or implied power to sell the trust assets and at one or more times after the creation of the interest one or more persons who are living when the trust is created have an unlimited power to terminate the interest.
  
- B. A general power of appointment that is not presently exercisable because of a condition precedent is invalid unless any of the following is true:
  - 1. At the time the power is created the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than twenty-one years after the death of a person who is then alive.
  - 2. The condition precedent either is satisfied or becomes impossible to satisfy within five hundred years after its creation.
  - 3. The power is with respect to an interest under a trust whose trustee has the expressed or implied power to sell the trust assets and at one or more times after the creation of the interest one or more persons who are living when the trust is created have an unlimited power to terminate the interest.
  
- C. A non-general power of appointment or a general testamentary power of appointment is invalid unless at least one of the following is true:
  - 1. At the time the power is created it is certain to be irrevocably exercised or otherwise to terminate not later than twenty-one years after the death of a person who is then alive.
  - 2. The power is irrevocably exercised or otherwise terminates within five hundred years after its creation.
  - 3. The power is with respect to an interest under a trust whose trustee has the expressed or implied power to sell the trust assets and at one or more times after the creation of the interest one or more persons who are living when the trust is created have an unlimited power to terminate the interest.

- D. In determining whether a nonvested property interest or a power of appointment is valid under subsection A, paragraph 1, subsection B, paragraph 1 or subsection C, paragraph 1, the possibility that a child will be born to a person after that person's death is disregarded.
- E. If the governing instrument seeks to do either of the following after the expiration of the latest period described by subsection A, B or C, that language is inoperative to the extent it produces a period of time that exceeds five hundred years after the creation of the trust:
  - 1. Disallow the vesting or termination of an interest or trust beyond that time.
  - 2. Postpone the vesting or termination of an interest or trust until that time.

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

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

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

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

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

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

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

1. In the county where the decedent had his domicile at the time of his death.
  2. If the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.
- B. Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 14-1303 or subsection C of this section.
- C. If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.
- D. For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary, is located where the debtor resides, or if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

**14-3203. Priority among persons seeking appointment as personal representative**

- A. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:
1. The person with priority as determined by a probated will including a person nominated by a power conferred in a will.
  2. The surviving spouse of the decedent who is a devisee of the decedent.
  3. Other devisees of the decedent.
  4. The surviving spouse of the decedent.
  5. Other heirs of the decedent.
  6. If the decedent was a veteran or the spouse or child of a veteran, the department of veterans' services.
  7. Forty-five days after the death of the decedent, any creditor, except a funeral director or funeral establishment owner who has control of the decedent's remains.
  8. The public fiduciary.
- B. An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in subsection A of this section apply, except that:

1. If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person.
  2. In case of objection to appointment of a surviving spouse, other than one whose priority is determined by will, by an heir or devisee appearing to have a substantial interest in the estate, and the surviving spouse is found by the court to be unsuitable, the court may appoint a person who is acceptable to heirs and devisees, whose interests in the estate appear to be worth in total more than half of the probable distributable value or, in default of this accord, any suitable person.
  3. In case of objection to appointment of a person who is not a surviving spouse, other than one whose priority is determined by will, by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person.
- C. A person entitled to letters under subsection A, paragraphs 2 through 5 of this section and a person who is at least fourteen years of age who would be entitled to letters but for the person's age may nominate a qualified person to act as personal representative. Any person who is at least eighteen years of age may renounce the person's right to nominate or to an appointment by appropriate writing filed with the court. If two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment.
- D. Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.
- E. Formal proceedings are required to appoint a personal representative in any of the following situations:
1. If there is a person with a higher order of priority who has not renounced or waived the person's right by appropriate writing filed with the court.
  2. If a priority is shared by two or more persons, as devisees under subsection A, paragraph 3 of this section, or as heirs under subsection A, paragraph 5 of this section, and one or more of them has not renounced or concurred in nominating the person whose appointment is applied for.
  3. If appointment is sought for a person who does not have any priority under this section, under this paragraph the court shall determine that those having priority do not object to the appointment, and that administration is necessary.
- F. A person is not qualified to serve as a personal representative who is:

1. Under the age of majority as defined in section 1-215.
  2. A person whom the court finds unsuitable in formal proceedings.
  3. A foreign corporation.
- G. A personal representative appointed by a court of the decedent's domicile has priority over all other persons except if the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.
- H. This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

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

- A. On commencement of a formal testacy proceeding, the clerk shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 14-1401 by the petitioner to the persons specified in this section and to any additional person who has filed a demand for notice under section 14-3204. Notice shall be given to the following persons: the surviving spouse, children and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate in another jurisdiction, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. To the extent that the petitioner is not otherwise required by section 14-1401 to give notice by publication, the petitioner shall give notice by publication in the manner prescribed by section 14-1401, subsection A, paragraph 3 to all unknown persons.
- B. If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at the decedent's last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:
1. By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent.
  2. By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent.
  3. By engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

**14-3415. Lost and missing wills; wills probated in other jurisdictions**

- A. If an original will that was last seen in the possession of the testator cannot be found after the testator's death, the testator is presumed to have destroyed the will with the intention of revoking it. This presumption may be rebutted by a preponderance of the evidence. If this presumption arises and is not rebutted the will is revoked.
- B. If a will is found to be valid and unrevoked and the original will is not available, its contents can be proved by a copy of the will and the testimony of at least one credible witness that the copy is a true copy of the original. It is not necessary for this person to be an attesting witness to the will.
- C. If a will is found to be valid and unrevoked and a copy of the will is not available, its contents can be proved only by clear and convincing evidence. For this purpose it is not necessary for a witness to be an attesting witness to the will. On a finding of clear and convincing evidence of the contents of such a will, the court, by order, shall set forth the contents of the will in reasonable detail.
- D. If a certified copy of the will, as probated in another jurisdiction, is not available, the contents of the will can be proved by a copy of the will and the testimony of at least one credible witness that the copy is a true copy of the original, as probated in the other jurisdiction. It is not necessary for this person to be an attesting witness to the will.

**14-3706. Duty of personal representative; inventory and appraisal**

- A. Within ninety days after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, its nature as community or separate property and the type and amount of any encumbrance that may exist with reference to any item.
- B. The personal representative may file the original of the inventory with the court and send a copy of the inventory only to interested persons who request it; or, if he elects not to file the inventory with the court, he must deliver or mail a copy of the inventory to each of the heirs in an intestate estate, or to each of the devisees if a will has been probated, and to any other interested persons who request it.

**14-3801. Notice to creditors**

- A. Unless notice has already been given under this section, at the time of appointment a personal representative shall publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the county announcing the appointment and the personal representative's address and notifying creditors of the estate to present their claims within four months after the date of the first publication of the notice or be forever barred.

- B. A personal representative shall give written notice by mail or other delivery to all known creditors, notifying the creditors of the personal representative's appointment. The notice shall also notify all known creditors to present the creditor's claim within four months after the published notice, if notice is given as provided in subsection A, or within sixty days after the mailing or other delivery of the notice, whichever is later, or be forever barred. A written notice shall be the notice described in subsection A or a similar notice.
- C. The personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice under this section.

**14-3805. Priority of claims**

- A. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:
  - 1. Costs and expenses of administration.
  - 2. Reasonable funeral expenses.
  - 3. Debts and taxes with preference under federal law.
  - 4. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him.
  - 5. Debts and taxes with preference under the laws of this state.
  - 6. All other claims.
- B. No preference shall be given in the payment of any claim over any other claim of the same class and a claim due and payable shall not be entitled to a preference over claims not due.

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

- A. Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than four months after the date of original appointment of a general personal representative for the estate a verified statement stating that the personal representative, or a previous personal representative has:
  - 1. Determined that the time limit for presentation of creditors' claims has expired.
  - 2. Fully administered the estate of the decedent by making payment, settlement or other disposition of all claims that were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed

the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements that have been made to accommodate outstanding liabilities.

3. Sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby.
- B. If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

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

- A. At any time after the death of a decedent, any employer owing wages, salary or other compensation for personal services of the decedent shall pay to the surviving spouse of the decedent the amount owing, not in excess of \$5,000, on being presented an affidavit made by or on behalf of the spouse stating that the affiant is the surviving spouse of the decedent, or is authorized to act on behalf of the spouse, and that no application or petition for the appointment of a personal representative is pending or has been granted in this state or, if granted, the personal representative has been discharged or more than one year has elapsed since a closing statement has been filed.
- B. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor and stating that all of the following are true:
1. Thirty days have elapsed since the death of the decedent.
  2. Either:
    - (a) An application or petition for the appointment of a personal representative is not pending and a personal representative has not been appointed in any jurisdiction and the value of all personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed \$75,000 as valued as of the date of death.
    - (b) The personal representative has been discharged or more than one year has elapsed since a closing statement has been filed and the value of all personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed \$75,000 as valued as of the date of the affidavit.
  3. The claiming successor is entitled to payment or delivery of the property.

4. The funeral expenses and expenses of the last illness of the decedent have been paid.
- C. A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors on presentation of an affidavit pursuant to subsection B of this section.
- D. The motor vehicle division shall transfer title of a motor vehicle from the decedent to the successor or successors on presentation of an affidavit as provided in subsection B of this section and on payment of the necessary fees.
- E. No sooner than six months after the death of a decedent, a person or persons claiming as successor or successors to the decedent's interest in real property, including any debt secured by a lien on real property, may file in the court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state then in any county in which real property of the decedent is located, an affidavit describing the real property and the interest of the decedent in that property and stating that all of the following are true and material and acknowledging that any false statement in the affidavit may subject the person or persons to penalties relating to perjury and subornation of perjury:
  1. Either:
    - (a) An application or petition for the appointment of a personal representative is not pending and a personal representative has not been appointed in any jurisdiction and the value of all real property in the decedent's estate located in this state, less liens and encumbrances against the real property, does not exceed \$100,000 as valued at the date of death. The value of the decedent's interest in that real property shall be determined from the full cash value of the property as shown on the assessment rolls for the year in which the decedent died, except that in the case of a debt secured by a lien on real property the value shall be determined by the unpaid principal balance due on the debt as of the date of death.
    - (b) The personal representative has been discharged or more than one year has elapsed since a closing statement has been filed and the value of all real property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed \$100,000 as valued as of the date of the affidavit. The value of the decedent's interest in that real property is determined from the full cash value of the property as shown on the assessment rolls for the year in which the affidavit is given, except that if a debt is secured by a lien on real property, the value is determined by the unpaid principal balance due on the debt as of the date of the affidavit.
  2. Six months have elapsed since the death of the decedent as shown in a certified copy of the decedent's death certificate attached to the affidavit.
  3. Funeral expenses, expenses of the last illness and all unsecured debts of the decedent have been paid.
  4. The person or persons signing the affidavit are entitled to the real property by reason of the allowance in lieu of homestead, exempt property or family allowance, by intestate succession as the sole heir or heirs, or by devise under a valid last will of the decedent,

the original of which is attached to the affidavit or has been probated.

5. No other person has a right to the interest of the decedent in the described property.
6. No federal estate tax is due on the decedent's estate.
- F. The normal filing fee shall be charged for the filing of an affidavit under subsection E of this section unless waived by the court as provided by section 12-301 or 12-302. On receipt of the affidavit and after determining that the affidavit is complete, the registrar shall issue a certified copy of the affidavit without attachments, and the copy shall be recorded in the office of the recorder in the county where the real property is located.
- G. This section does not limit the rights of heirs and devisees under section 14-3901.

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

- A. The alleged incapacitated person or any person interested in that person's affairs or welfare may petition for the appointment of a guardian or for any other appropriate protective order.
- B. The petition shall contain a statement that the authority granted to the guardian may include the authority to withhold or withdraw life sustaining treatment, including artificial food and fluid, and shall state, at a minimum and to the extent known, all of the following:
  1. The interest of the petitioner.
  2. The name, age, residence and address of the alleged incapacitated person.
  3. The name, address and priority for appointment of the person whose appointment is sought.
  4. The name and address of the conservator, if any, of the alleged incapacitated person.
  5. The name and address of the nearest relative of the alleged incapacitated person known to the petitioner.
  6. A general statement of the property of the alleged incapacitated person, with an estimate of its value and including any compensation, insurance, pension or allowance to which the person is entitled.
  7. The reason why appointment of a guardian or any other protective order is necessary.
  8. The type of guardianship requested. If a general guardianship is requested, the petition must state that other alternatives have been explored and why a limited guardianship is not appropriate. If a limited guardianship is requested, the petition also must state what specific powers are requested.
  9. If a legal decision-making, parenting time or visitation order was previously entered

regarding an alleged incapacitated person in a marriage dissolution, legal separation or paternity action in this state or another jurisdiction and the petitioner or proposed guardian is a parent of the alleged incapacitated person or a nonparent who has been awarded legal decision-making as to the alleged incapacitated person, the court and case number for that action or proceeding and include a copy of the most recent court order regarding legal decision-making, parenting time and visitation.

10. If the appointment of a guardian is necessary due solely to the physical incapacity of the alleged incapacitated person.
- C. On the filing of a petition, the court shall set a hearing date on the issues of incapacity. Unless the alleged incapacitated person is represented by independent counsel, the court shall appoint an attorney to represent that person in the proceeding. The alleged incapacitated person shall be interviewed by an investigator appointed by the court and shall be examined by a physician, psychologist or registered nurse appointed by the court. If the alleged incapacitated person has an established relationship with a physician, psychologist or registered nurse who is determined by the court to be qualified to evaluate the capacity of the alleged incapacitated person, the court may appoint the alleged incapacitated person's physician, psychologist or registered nurse pursuant to this subsection. The investigator and the person conducting the examination shall submit their reports in writing to the court. In addition to information required under subsection D, the court may direct that either report include other information the court deems appropriate. The investigator also shall interview the person seeking appointment as guardian, visit the present place of abode of the alleged incapacitated person and the place where it is proposed that the person will be detained or reside if the requested appointment is made and submit a report in writing to the court. The alleged incapacitated person is entitled to be present at the hearing and to see or hear all evidence bearing on that person's condition. The alleged incapacitated person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed examiner and investigator, and to trial by jury. The court may determine the issue at a closed hearing if the alleged incapacitated person or that person's counsel so requests.
- D. A report filed pursuant to this section by a physician, psychologist or registered nurse acting within that person's scope of practice shall include the following information:
1. A specific description of the physical, psychiatric or psychological diagnosis of the person.
  2. A comprehensive assessment listing any functional impairments of the alleged incapacitated person and an explanation of how and to what extent these functional impairments may prevent that person from receiving or evaluating information in making decisions or in communicating informed decisions regarding that person.
  3. An analysis of the tasks of daily living the alleged incapacitated person is capable of performing without direction or with minimal direction.
  4. A list of all medications the alleged incapacitated person is receiving, the dosage of the medications and a description of the effects each medication has on the person's behavior

to the best of the declarant's knowledge.

5. A prognosis for improvement in the alleged incapacitated person's condition and a recommendation for the most appropriate rehabilitation plan or care plan.
6. Other information the physician, psychologist or registered nurse deems appropriate.

**14-5304. Findings; limitations; filing; fingerprinting**

- A. In exercising its appointment authority pursuant to this chapter, the court shall encourage the development of maximum self-reliance and independence of the incapacitated person.
- B. The court may appoint a general or limited guardian as requested if the court finds by clear and convincing evidence that:
  1. The person for whom a guardian is sought is incapacitated.
  2. The appointment is necessary to provide for the demonstrated needs of the incapacitated person.
  3. The person's needs cannot be met by less restrictive means, including the use of appropriate technological assistance.
- C. In conformity with the evidence regarding the extent of the ward's incapacity, the court may appoint a limited guardian and specify time limits on the guardianship and limitations on the guardian's powers.
- D. The guardian shall file an acceptance of appointment with the appointing court.
- E. The court may require each person who seeks appointment as a guardian to furnish a full set of fingerprints to enable the court to conduct a criminal background investigation. The court shall submit the person's completed fingerprint card to the department of public safety. The person shall bear the cost of obtaining the person's criminal history record information. The cost shall not exceed the actual cost of obtaining the person's criminal history record information. Criminal history records checks shall be conducted pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. This subsection does not apply to a fiduciary who is licensed pursuant to section 14-5651 or an employee of a financial institution.
- F. The court shall make a specific finding as to whether the appointment of a guardian is due solely to the ward's physical incapacity.
- G. Unless the court makes a specific finding that the appointment of a guardian is due solely to the ward's physical incapacity under subsection F of this section, at the time of appointing a guardian, the court shall transmit the ward's name, sex and date of birth, the last four digits of the ward's social security number, if available, the court case number, the court

originating agency identification number and the date of the guardian's appointment to the supreme court. The supreme court shall transmit the information to the department of public safety. The department of public safety shall transmit the information to the national instant criminal background check system.

- H. If a petition for guardianship is withdrawn before an adjudication of incapacity or is denied based on a finding that the allegation of incapacity is unproven or if a petition for guardianship was filed frivolously or without merit, the court may order public access to the file, the records contained in the file, or information about the file be prohibited absent a subsequent court order allowing such access after a showing of good cause.

#### **14-5307. Substitution or resignation of guardian; termination of incapacity**

- A. On petition of the ward or any person interested in the ward's welfare, or on the court's own initiative, the court shall substitute a guardian and appoint a successor if it is in the best interest of the ward. The court does not need to find that the guardian acted inappropriately to find that the substitution is in the ward's best interest. The guardian and the guardian's attorney may be compensated from the ward's estate for defending against a petition for substitution only for the amount ordered by the court and on petition by the guardian or the guardian's attorney. When substituting a guardian and appointing a successor, the court may appoint an individual nominated by the ward if the ward is at least fourteen years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice. On petition of the guardian, the court may accept a resignation and make any other order that may be appropriate.
- B. The ward may petition the court for an order that the ward is no longer incapacitated or petition for substitution of the guardian at any time. A request for this order may be made by informal letter to the court or judge. A person who knowingly interferes with the transmission of this request may be found in contempt of court.
- C. An interested person, other than the guardian or ward, shall not file a petition for adjudication that the ward is no longer incapacitated earlier than one year after the order adjudicating incapacity was entered unless the court permits it to be made on the basis of affidavits that there is reason to believe that the ward is no longer incapacitated.
- D. An interested person, other than the guardian or ward, shall not file a petition to substitute a guardian earlier than one year after the order adjudicating incapacity was entered unless the court permits it to be made on the basis of affidavits that there is reason to believe that the current guardian will endanger the ward's physical, mental or emotional health if not substituted.
- E. Before substituting a guardian, accepting the resignation of a guardian or ordering that a ward's incapacity has terminated, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send an investigator to the residence of the present guardian and to the place where the ward resides or is detained to observe conditions and report in writing to the court.

- F. On termination of the incapacity, the supreme court shall transmit the order terminating the incapacity to the department of public safety. The department of public safety shall transmit the information to the national instant criminal background check system.

**14-5309. Notices in guardianship proceedings**

- A. In a proceeding for a contact order or modification of a contact order pursuant to section 14-5316 or for the appointment or substitution of a guardian of a ward or an alleged incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of a hearing shall be given to each of the following:
  - 1. The ward or the alleged incapacitated person and that person's spouse, parents and adult children.
  - 2. Any person who is serving as guardian or conservator or who has the care and custody of the ward or the alleged incapacitated person.
  - 3. In case no other person is notified under paragraph 1 of this subsection, at least one of that person's closest adult relatives, if any can be found.
  - 4. Any person who has filed a demand for notice.
- B. At least fourteen days before the hearing notice shall be served personally on the ward or the alleged incapacitated person and that person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the ward or the alleged incapacitated person shall be given as provided in section 14-1401. Waiver of notice by the ward or the alleged incapacitated person is not effective unless that person attends the hearing.

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

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

**14-5311. Who may be guardian; priorities**

- A. Any qualified person may be appointed guardian of an incapacitated person, subject to the requirements of section 14-5106.
- B. The court may consider the following persons for appointment as guardian in the following order:
1. A guardian or conservator of the person or a fiduciary appointed or recognized by the appropriate court of any jurisdiction in which the incapacitated person resides.
  2. An individual or corporation nominated by the incapacitated person if the person has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.
  3. The person nominated to serve as guardian in the incapacitated person's most recent durable power of attorney or health care power of attorney.
  4. The spouse of the incapacitated person.
  5. An adult child of the incapacitated person.
  6. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.
  7. Any relative of the incapacitated person with whom the incapacitated person has resided for more than six months before the filing of the petition.
  8. The nominee of a person who is caring for or paying benefits to the incapacitated person.
  9. If the incapacitated person is a veteran, the spouse of a veteran or the minor child of a veteran, the department of veterans' services.
  10. A fiduciary who is licensed pursuant to section 14-5651, other than a public fiduciary.
  11. A public fiduciary who is licensed pursuant to section 14-5651.
- C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 of this section may nominate in writing a person to serve in that person's place. With respect to persons who have equal priority, the court shall select the one the court determines is best qualified to serve.
- D. Notwithstanding the priorities set forth in subsection B of this section, if the petition for appointment of a guardian for the incapacitated person is filed pursuant to section 14-5301.03 or within two years after the incapacitated person's eighteenth birthday, unless the court finds the appointment to be contrary to the incapacitated person's best interest:
1. The court shall appoint as the incapacitated person's guardian any person who, by court order, had sole legal decision-making of the incapacitated person when the incapacitated person attained eighteen years of age.

2. If two persons had joint legal decision-making of the incapacitated person when the incapacitated person attained eighteen years of age, the court shall appoint both persons as the incapacitated person's co-guardians.
- E. The court may appoint more than one person as the incapacitated person's co-guardians if the appointment is required by subsection D of this section or the court finds that the appointment is in the incapacitated person's best interest. If the court appoints co-guardians, the co-guardians shall share decision-making for the incapacitated person and neither co-guardian's rights or responsibilities are superior except as otherwise ordered by the court.
- F. For good cause the court may pass over a person who has priority and appoint a person who has a lower priority or no priority. For the purposes of this subsection, "good cause" includes a determination that:
1. The incapacitated person's durable power of attorney or health care power of attorney is invalid.
  2. Honoring the incapacitated person's durable power of attorney or health care power of attorney would not be in the physical, emotional or financial best interest of the incapacitated person.
  3. The estimated cost of the fiduciary and associated professional fees would adversely affect the ability of the incapacitated person's estate to provide for the incapacitated person's reasonable and necessary living expenses.
- G. On a request by a person who was passed over by the court pursuant to subsection F of this section, the court shall make a specific finding regarding the court's determination of good cause and why the person was not appointed. The request must be made within ten days after the entry of the order.

#### **14-5312. General powers and duties of guardian**

- A. A guardian of an incapacitated person has the same powers, rights and duties respecting the guardian's ward that a parent has respecting the parent's unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the guardianship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:
1. To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without this state.
  2. If entitled to custody of the ward the guardian shall make provision for the care, comfort and maintenance of the ward and, whenever appropriate, arrange for the

ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

3. A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service.
4. If no conservator for the estate of the ward has been appointed, the guardian may:
  - (a) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such person's duty.
  - (b) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward, but the guardian may not use funds from his ward's estate for room and board the guardian or the guardian's spouse, parent or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.
5. A guardian is required to report the condition of the ward and of the estate that has been subject to the guardian's possession or control, as required by the court or court rule.
6. If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care and education of the ward shall be paid to the conservator for management as provided in this chapter and the guardian must account to the conservator for funds expended.
7. If appropriate, a guardian shall encourage the ward to develop maximum self-reliance and independence and shall actively work toward limiting or terminating the guardianship and seeking alternatives to guardianship.
8. A guardian shall find the most appropriate and least restrictive setting for the ward consistent with the ward's needs, capabilities and financial ability.
9. A guardian shall make reasonable efforts to secure appropriate medical and psychological care and social services for the ward.
10. A guardian shall make reasonable efforts to secure appropriate training, education and social and vocational opportunities for his ward in order to maximize the ward's potential for independence.
11. In making decisions concerning his ward, a guardian shall take into consideration the ward's values and wishes.
12. The guardian is authorized to act pursuant to title 36, chapter 32.

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

- (a) The ward's age.
- (b) The degree or type of developmental disability.
- (c) The presence of other disabling conditions.
- (d) The guardian's ability to provide the maximum opportunity to develop the ward's maximum potential, to provide a minimally structured residential program and environment for the ward and to provide a safe, secure, and dependable residential and program environment.
- (e) The particular desires of the individual.

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

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

- A. Except as provided in subsection B of this section, a guardian of an incapacitated person may consent to psychiatric and psychological care and treatment, including the administration of psychotropic medications, if the care and treatment take place outside an inpatient psychiatric facility licensed by the department of health services.
- B. On clear and convincing evidence that the ward is an incapacitated person and is likely to be in need of inpatient mental health care and treatment within the period of the authority granted pursuant to this section, the court may authorize a guardian appointed pursuant to this title to give consent for the ward to receive inpatient mental health care and treatment, including placement in an inpatient psychiatric facility licensed by the department of health services and medical, psychiatric and psychological treatment associated with that placement. The evidence shall be supported by the opinion of a mental health expert who is either a physician licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1.
- C. In making its decision to grant authority to a guardian pursuant to subsection B of this section, the court shall consider the cause of the ward's disability and the ward's foreseeable clinical needs. The court shall limit the guardian's authority to what is reasonably necessary to obtain the care required for the ward in the least restrictive

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

- D. Within forty-eight hours after placement of the ward pursuant to this section, the guardian shall give notice of this action to the ward's attorney. When the attorney receives this notice the attorney shall assess the appropriateness of the placement pursuant to section 36-537, subsection B and section 36-546, subsection H. If requested by the attorney, the court shall hold a hearing on the appropriateness of the placement within three days after receiving that request.
- E. The inpatient psychiatric facility shall assess the appropriateness of the ward's placement every thirty days and shall provide a copy of the assessment report to the ward's attorney on request. The ward's attorney may attend the ward's evaluation, staffing, treatment team and case management meetings.
- F. When the ward is admitted to an inpatient psychiatric facility pursuant to this section, the guardian shall provide the facility with the name, address and telephone number of the ward's attorney. The facility shall include this information in the ward's treatment record.
- G. Within twenty-four hours after the facility receives any writing in which the ward requests release from the facility, any change in placement or a change in the type or duration of treatment, the facility shall forward this information to the ward's attorney.
- H. All health care providers, treatment facilities and regional behavioral health authorities shall allow the ward's attorney access to all of the ward's medical, psychiatric, psychological and other treatment records.
- I. The ward's guardian shall place the ward in a least restrictive treatment alternative within five days after the guardian is notified by the medical director of the inpatient facility that the ward no longer needs inpatient care. The ward, a representative of the inpatient treatment facility, the ward's attorney, the ward's physician or any other interested person may petition the court to order the facility to discharge the ward to a least restrictive treatment alternative if the guardian does not act promptly to do so.
- J. If the ward is in an inpatient psychiatric facility at the time of the initial hearing on the petition for appointment of a guardian, the court investigator and the ward's attorney shall advise the court of the appropriateness of the placement.
- K. An attorney appointed pursuant to section 14-5303, subsection C remains the attorney of record until the attorney is discharged by the court. The court shall ensure that a ward whose guardian has been granted inpatient mental health treatment authority is represented by an attorney at all times the guardian has that authority. Unless the court finds that the ward has insufficient assets to meet the ward's reasonable and necessary care and living expenses, the ward shall pay the attorney's reasonable fees.
- L. If deemed necessary to adequately assess a request for inpatient mental health treatment authority or to review the ward's placement in an inpatient psychiatric facility, the court may order an independent evaluation by either a physician who is licensed pursuant to

title 32, chapter 13 or 17 and who is a specialist in psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1. If the ward has insufficient funds to pay the total cost of this evaluation, the court may deem all or any part of the evaluator's fee to be a county expense after determining the reasonableness of that fee.

- M. Instead of ordering an independent evaluation pursuant to subsection L of this section, the court may accept a report conducted on behalf of the inpatient psychiatric facility if the court finds that the report meets the requirements of an independent evaluation.
- N. The court may decide that the ward's right to retain or obtain a driver license and any other civil right that may be suspended by operation of law is not affected by the appointment of a guardian.
- O. If the court grants the guardian the authority to consent to inpatient mental health care and treatment pursuant to this section, the medical director of an inpatient psychiatric facility licensed by the department of health services may admit the ward at the guardian's request.
- P. A guardian who is authorized by the court to consent to inpatient mental health care and treatment pursuant to this section shall file with the annual report of the guardian required pursuant to section 14-5315 an evaluation report by a physician or a psychologist who meets the requirements of subsection B of this section. The evaluation report shall indicate if the ward will likely need inpatient mental health care and treatment within the period of the authority granted pursuant to this section. If the guardian does not file the evaluation report or if the report indicates that the ward will not likely need inpatient mental health care and treatment, the guardian's authority to consent to this treatment ceases on the expiration of the period specified in the prior court order. If the report supports the continuation of the guardian's authority to consent to inpatient treatment, the court may order that the guardian's authority to consent to this treatment continues. If the report supports the continuation of the guardian's authority to consent to this treatment, the ward's attorney shall review the report with the ward. The ward may contest the continuation of the guardian's authority by filing a request for a court hearing within ten business days after the report is filed. The court shall hold this hearing within thirty calendar days after it receives the request. The guardian's authority continues pending the court's ruling on the issue. At the hearing the guardian has the burden of proving by clear and convincing evidence that the ward is likely to be in need of inpatient mental health care and treatment within the period of the authority granted pursuant to this section.
- Q. The court may discharge an attorney who was appointed pursuant to section 14-5303, subsection C subsequent to the appointment of a guardian if it clearly appears from specific facts presented by affidavit or verified petition that continued representation of the ward is no longer necessary or desirable. The factual basis must include, at a minimum, consideration of the following:
  - 1. The nature and history of the ward's illness.
  - 2. The ward's history of hospitalization.

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

**14-5315. Guardian reports; contents**

- A. A guardian shall submit a written report to the court annually, pursuant to rules adopted by the supreme court, on resignation or substitution as guardian and on termination of the ward's disability.
- B. The guardian shall mail a copy of the report to:
  1. The ward.
  2. The ward's conservator.
  3. The ward's spouse or the ward's parents if the ward is not married.
  4. A court appointed attorney for the ward.
  5. Any other interested person who has filed a demand for notice with the court.
- C. The report shall include the following:
  1. The type, name and address of the home or facility where the ward lives and the name of the person in charge of the home.
  2. The number of times the guardian has seen the ward in the last twelve months.
  3. The date the guardian last saw the ward.
  4. The name and address of the ward's physician or registered nurse practitioner.
  5. The date the ward was last seen by a physician or a registered nurse practitioner.
  6. A copy of the ward's physician's or registered nurse practitioner's report to the guardian or, if none exists, a summary of the physician's or the registered nurse practitioner's observations on the ward's physical and mental condition.
  7. Major changes in the ward's physical or mental condition observed by the guardian in the last year.

8. The guardian's opinion as to whether the guardianship should be continued.
9. A summary of the services provided to the ward by a governmental agency and the name of the individual responsible for the ward's affairs with that agency.

**14-5401. Protective proceedings; fingerprinting**

- A. On petition and after notice and a hearing pursuant to this article, the court may appoint a conservator or make another protective order for cause as follows:
  1. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection that cannot otherwise be provided or has or may have affairs that may be jeopardized or prevented by minority or that funds are needed for the minor's support and education and that protection is necessary or desirable to obtain or provide funds.
  2. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court specifically finds on the record both of the following:
    - (a) The person is unable to manage the person's estate and affairs effectively for reasons such as mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance.
    - (b) The person has property that will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds.
- B. On petition and after notice and a hearing pursuant to this article, the court may continue a conservatorship or other protective order entered pursuant to subsection A, paragraph 1 of this section beyond the minor's eighteenth birthday if the court determines that the order is appropriate pursuant to subsection A, paragraph 2 of this section. The petition shall comply with the requirements of section 14-5404, subsection B and must be filed after the minor's seventeenth birthday and before termination of the conservatorship by court order.
- C. The court may require each person who seeks appointment as a conservator to furnish a full set of fingerprints to enable the court to conduct a criminal background investigation. The court shall submit the person's completed fingerprint card to the department of public safety. The person shall bear the cost of obtaining the person's criminal history record information. The cost shall not exceed the actual cost of obtaining the person's criminal history record information. Criminal history records checks shall be conducted pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau

of investigation. This subsection does not apply to a fiduciary who is licensed pursuant to section 14-5651 or an employee of a financial institution.

#### **14-5403. Venue**

Venue for proceedings under this article is:

1. In the county in this state where the person to be protected resides whether or not a guardian has been appointed in another place.
2. If the person to be protected does not reside in this state, in any county where he has property.

#### **14-5405. Notice in conservatorship proceedings**

A. In a proceeding for the appointment or substitution of a conservator of a protected person or person allegedly in need of protection, other than the appointment of a temporary conservator or temporary suspension of a conservator, and in a proceeding to continue a conservatorship or other protective order pursuant to section 14- 5401, subsection B, notice of the hearing shall be given to each of the following:

1. The protected person or the person allegedly in need of protection if that person is fourteen years of age or older.
2. The spouse, parents and adult children of the protected person or person allegedly in need of protection, or if no spouse, parents or adult children can be located, at least one adult relative of the protected person or the person allegedly in need of protection, if such a relative can be found.
3. Any person who is serving as guardian or conservator or who has the care and custody of the protected person or person allegedly in need of protection.
4. Any person who has filed a demand for notice.

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

#### **14-5408. Permissible court orders**

A. The court has the following powers which may be exercised directly or through a

conservator in respect to the estate and affairs of protected persons:

1. While a petition for appointment of a conservator or any other protective order is pending and after a preliminary hearing and without notice to others, the court has power to preserve and apply the estate of the person allegedly in need of protection as may be required for that person's benefit or the benefit of that person's dependents.
  2. After a hearing and upon determining that a basis for an appointment or any other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family and members of the minor's household.
  3. After a hearing and upon determining that a basis for an appointment or any other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the protected person and members of that person's household, all the powers over his estate and affairs which the protected person could exercise if present and not under disability, except the power to make a will or to make gifts other than those authorized by this section.
  4. After notice and a hearing the court may authorize the conservator to make gifts on behalf of the protected person out of the estate of the protected person to donees and in amounts that are consistent with the protected person's best interests and intentions. In determining if these gifts are in the protected person's best interests the court shall consider:
    - (a) The protected person's estate plan, if any.
    - (b) The protected person's pattern of prior gifts, if any.
    - (c) The potential tax savings that would result if a gift were authorized.
    - (d) The size of the estate.
    - (e) The protected person's income and expenses.
    - (f) The physical and mental condition and life expectancy of the protected person.
    - (g) The likelihood that the protected person's disability may cease.
    - (h) The likelihood that the protected person would make the gift if the person were able to consent.
    - (i) The ability of the protected person to consent to the proposed gifts.
- B. An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists has no effect on the capacity of the protected person.

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

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

- A. The court may appoint an individual or a corporation, with general power to serve as trustee, as conservator of the estate of a protected person subject to the requirements of section 14-5106. The following are entitled to consideration for appointment in the order listed:
1. A conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides.
  2. An individual or corporation nominated by the protected person if the protected person is at least fourteen years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.
  3. The person nominated to serve as conservator in the protected person's most recent durable power of attorney.
  4. The spouse of the protected person.
  5. An adult child of the protected person.
  6. A parent of the protected person, or a person nominated by the will of a deceased parent.
  7. Any relative of the protected person with whom the protected person has resided for more than six months before the filing of the petition.
  8. The nominee of a person who is caring for or paying benefits to the protected person.
  9. If the protected person is a veteran, the spouse of a veteran or the minor child of a veteran, the department of veterans' services.
  10. A fiduciary who is licensed pursuant to section 14-5651, other than a public fiduciary.
  11. A public fiduciary who is licensed pursuant to section 14-5651.
- B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this section may nominate in writing a person to serve in that person's place. With respect to persons having equal priority, the court shall select the one it determines is best qualified to serve. The court, for good cause, may pass over a person having priority and appoint a person having a lower priority or no priority. For the purposes of this subsection, "good cause" includes a determination that:

1. The protected person's durable power of attorney is invalid.
  2. Honoring the protected person's durable power of attorney would not be in the physical, emotional or financial best interest of the protected person.
  3. The estimated cost of the fiduciary and associated professional fees would adversely affect the ability of the person's estate to provide for the protected person's reasonable and necessary living expenses.
- C. On the request of a person who was passed over by the court pursuant to subsection B of this section, the court shall make a specific finding regarding the court's determination of good cause and why the person was not appointed. The request must be made within ten days after the entry of the order.

**14-5414. Compensation and expenses; definitions**

- A. If not otherwise compensated for services rendered, any investigator, accountant, lawyer, physician, registered nurse, psychologist, guardian ad litem or conservator who is appointed in a protective proceeding, including a lawyer of the person alleged to be in need of protection pursuant to section 14-5407, subsection B, is entitled to reasonable compensation from the estate of the protected person if the petition is granted or from the petitioner if the petition is denied.
- B. If the petitioner withdraws the petition or if the court dismisses the petition because of the petitioner's failure to prosecute, the court may order that the compensation of the investigator, accountant, lawyer, physician, registered nurse, psychologist, guardian ad litem or conservator who is appointed pursuant to this article, including a lawyer of the person alleged to be in need of protection pursuant to section 14-5407, subsection B, be paid either from the protected person's estate or by the petitioner, depending on the facts and circumstances. In making these determinations, the court may consider any evidence it deems appropriate.
- C. A lawyer who is employed by the conservator to represent the conservator in the conservator's appointment or duties as conservator is entitled to reasonable compensation from the estate if the petition is granted. If the petitioner withdraws the petition or if the petition is dismissed because of the petitioner's failure to prosecute, the court may order that the compensation of the proposed conservator's lawyer be paid either from the protected person's estate or by the petitioner, depending on the facts and circumstances. In determining which party shall pay, the court may consider any evidence it deems appropriate.
- D. A lawyer who is employed by the petitioner to represent the petitioner in seeking the appointment of a conservator is entitled to reasonable compensation from the protected person's estate if the petition is granted.
- E. If the court pays for any of these services it may charge the estate for reasonable compensation. The clerk shall deposit monies it collects in the probate fund pursuant to

section 14-5433.

- F. If a county pays for any of these services from general fund appropriations, the county may charge the estate for reasonable compensation. The county treasurer shall deposit monies collected pursuant to this subsection in the same fund from which the expenditure was made.
- G. Compensation payable to the department of veterans' services, when acting as a conservator of the estate of a veteran or a veteran's surviving spouse or minor child or the incapacitated spouse of a protected veteran, shall not be more than five percent of the amount of monies received during the period covered by the conservatorship. A copy of the petition and notice of hearing shall be given to the proper officer of the United States department of veterans affairs in the manner provided in the case of any hearing on a guardian's account or any other pleading. A commission or compensation is not allowed on the monies or other assets received from a prior conservator or on the amount received from liquidation of loans or other investments.
- H. For the purposes of this section:
  - 1. "Conservator" includes a conservator, temporary conservator or special conservator.
  - 2. "Petition" means a petition filed pursuant to section 14-5401.01, subsection A or section 14-5404, subsection A.
  - 3. "Protected person" includes a person who is alleged to be in need of protection.

#### **14-5418. Inventory and records**

- A. Within ninety days after appointment, a conservator shall prepare and file with the court an inventory of the assets of the protected person on the date of the conservator's appointment, listing it with reasonable detail and indicating the fair market value of each asset as of the date of appointment. The conservator shall attach to the inventory a copy of the protected person's consumer credit report from a credit reporting agency that is dated within ninety days before the filing of the inventory.
- B. The conservator shall provide a copy of the inventory to the protected person if the protected person can be located, has attained fourteen years of age, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of the conservator's administration and exhibit the records on request of any interested person.
- C. Unless otherwise ordered by the court, a person who is entitled to notice of the conservator's annual account pursuant to section 14-5419, subsection C may request in writing that the conservator do one of the following not more than once every thirty days:
  - 1. Allow the person to view the protected person's financial records, the conservator's billing statements, the billing statements of the conservator's attorney or other records related to the protected person under the conservator's control.
  - 2. Provide the requesting person with copies of these documents. Unless otherwise

ordered by the court, the conservator shall allow the person to view or provide copies of the requested documents to the person as soon as practicable but no later than thirty days after receiving the request. The requesting party must pay reasonable copying costs.

3. Provide a report of receipts and disbursements of the conservatorship.

**14-5419. Accounts; definition**

- A. Except as provided pursuant to subsection F of this section, every conservator must account to the court for the administration of the estate annually pursuant to rules adopted by the supreme court and on termination of the protected person's minority or disability, except that for good cause shown on the application of an interested person, the court may relieve the conservator of filing annual or other accounts by an order entered in the minutes.
- B. The court may take any appropriate action on filing of annual or other accounts. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify.
- C. An adjudication allowing an intermediate or final account can be made only on petition, notice and a hearing. Notice must be given to:
  1. The protected person.
  2. A guardian of the protected person if one has been appointed, unless the same person is serving as both guardian and conservator.
  3. If no guardian has been appointed or the same person is serving as both guardian and conservator, a spouse or, if the spouse is the conservator, there is no spouse or the spouse is incapacitated, a parent or an adult child who is not serving as a conservator.
  4. A guardian ad litem appointed for the protected person, if the court determines in accordance with section 14- 1408 that representation of the interest of the protected person would otherwise be inadequate.
- D. An order, made on notice and a hearing, allowing an intermediate account of a conservator, adjudicates as to the conservator's liabilities concerning the matters considered in connection therewith. An order, made on notice and a hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship.
- E. In any case in which the estate consists, in whole or in part, of benefits paid by the United States department of veterans affairs to the conservator or the conservator's predecessor for the benefit of the protected person, the United States department of veterans affairs office that has jurisdiction over the area is entitled to a copy of any account filed under this article. Each year in which an account is not filed with the court, the conservator, if requested, shall

submit an account to the appropriate United States department of veterans affairs office. If an account is not submitted as requested, or if it is found unsatisfactory by the United States department of veterans affairs, the court on receipt of notice of the deficiency shall require the conservator to immediately file an account with the court promptly.

F. Unless prohibited by order of the court, the conservator may file with the court, in lieu of a final account, a verified statement stating that:

1. The protected person has died. The conservator shall attach a certified copy of the protected person's death certificate to the statement.
2. The protected person's successors have all waived in writing their right to have the conservator submit to the court a final account of the conservator's administration of the protected person's estate. The conservator shall attach the originals of the written waivers to the statement.
3. The conservator has delivered a copy of a closing statement to the protected person's successors. The conservator shall attach a copy of the closing statement to the statement.

G. The closing statement that is to be delivered to the protected person's successors shall be a verified statement stating the following:

1. The protected person has died and the date of the person's death.
2. The persons receiving the closing statement have a right to have the conservator submit to the court a final account of the conservator's administration of the protected person's estate.
3. If the person wishes to have the final accounting reviewed by the court, the person should not sign a waiver that waives this right.
4. If all persons receiving the closing statement choose to waive the right to have the conservator submit to the court a final account, the final account will not be reviewed by the court.
5. A list of the property owned by the protected person, as of the date of the protected person's death, is attached to the closing statement and that the list states the fair market value of the property as of the date of the protected person's death.
6. The conservator, by the closing statement, shall inform the protected person's successors that if they waive court review of the conservator's final account, the conservatorship will be terminated, the conservator will be discharged from all liabilities relating to the conservatorship, the bond or other security posted by the conservator will be exonerated and any restrictions previously imposed on the assets of the conservatorship will be lifted.

H. The conservator shall file an affidavit with the court that states that the closing statement was sent or delivered to the protected person's successors on a date before the date that the

protected person's successors signed the written waiver.

- I. Unless proceedings are pending against the conservator, on the filing of the statement described in subsection F of this section and the affidavit described in subsection H of this section, the court shall enter an order terminating the conservatorship, discharging the conservator from all liabilities relating to the conservatorship, exonerating and releasing any bond or other security posted by the conservator and releasing any restrictions previously imposed on the assets of the conservatorship.
- J. For the purposes of this section, "protected person's successors" means:
  1. The personal representative of the protected person's estate if the personal representative and the conservator are not the same person.
  2. If the conservator and the personal representative of the protected person's estate are the same person and if the protected person died intestate, the protected person's heirs.
  3. If the conservator and the personal representative of the protected person's estate are the same person and if the protected person died testate, the devisees under the protected person's will that has been admitted to probate.

#### **14-5421. Recording of conservator's letters**

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

#### **14-5424. Powers of conservator in administration**

- A. Subject to the limitations provided in section 14-5425, a conservator has all the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 14-5209 until the minor attains the age of majority or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by article 2 of this chapter.
- B. A conservator, without court authorization or confirmation, may invest and reinvest funds of the estate as would a trustee.

- C. A conservator, acting reasonably in efforts to accomplish the purpose of the appointment, may act without court authorization or confirmation to:
1. Collect, hold and retain assets of the estate including land in another state, until, in the conservator's judgment, disposition of the assets should be made. Assets may be retained even though they include an asset in which the conservator is personally interested.
  2. Receive additions to the estate.
  3. Continue or participate in the operation of any business or other enterprise.
  4. Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest.
  5. Invest and reinvest estate assets in accordance with subsection B of this section.
  6. Deposit estate funds in a state or federally insured financial institution including one operated by the conservator.
  7. Acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of or abandon an estate asset.
  8. Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements and raze existing or erect new party walls or buildings.
  9. Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange, partition by giving or receiving considerations and dedicate easements to public use without consideration.
  10. Enter for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term within or extending beyond the term of the conservatorship.
  11. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.
  12. Grant an option involving disposition of an estate asset, or take an option for the acquisition of any asset.
  13. Vote a security, in person or by general or limited proxy.
  14. Pay calls, assessments and any other sums chargeable or accruing against or on account of securities.
  15. Sell or exercise stock subscription or conversion rights and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or

liquidation of a corporation or other business enterprise.

16. Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held.
  17. Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons.
  18. Borrow money to be repaid from estate assets or otherwise, advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made.
  19. Pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible except that personal injury or wrongful death claims shall be compromised pursuant to subsection D of this section.
  20. Pay taxes, assessments, compensation of the conservator and other expenses incurred in the collection, care, administration and protection of the estate.
  21. Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence or amortization, or for depletion in mineral or timber properties.
  22. Pay any sum distributable to a protected person or dependent of the protected person, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the guardian of the distributee or, if none, to a relative or other person having custody of the person.
  23. Employ persons, including attorneys, auditors, investment advisors or agents, even though they are associated with the conservator, to advise or assist the conservator in the performance of administrative duties, act upon their recommendation without independent investigation and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary.
  24. Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of fiduciary duties.
  25. Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.
- D. A conservator may act with court approval to compromise a personal injury or wrongful death claim for a protected person. The conservator may act with court approval to release an alleged tortfeasor if the release is in the best interest of the protected person. If the conservator obtains an order of approval for compromise from a court of competent

jurisdiction, the compromise may be in exchange for a lump sum amount or an arrangement that defers the receipt of part or all of the consideration for the compromise until after the protected person reaches majority and may involve a structured settlement or the creation of a trust on the terms that the court approves for any protected person.

#### **14-5425. Distributive duties and powers of conservator**

- A. A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person and the person's dependents in accordance with the following principles:
- B. The conservator shall consider recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian, if any. The conservator may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian is deriving personal financial benefit from this action, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.
  - 1. The conservator shall expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person and the person's dependents with due regard to:
    - (a) The size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to be wholly self-sufficient and able to manage business affairs and the estate.
    - (b) The accustomed standard of living of the protected person and the person's dependents.
    - (c) Other funds or sources used for the support of the protected person.
  - 2. With respect to the affairs and estate of a minor, the conservator shall also consider the following factors in making estate distributions:
    - (a) The financial responsibility and financial resources of the parents of the child.
    - (b) Extraordinary custodial responsibilities undertaken by the parent or parents as the result of the child's physical or mental condition and the effect of these extraordinary responsibilities on appropriate gainful employment of the parent.
    - (c) The physical and mental condition of the child and the child's medical and educational needs. Any incidental benefit to other members of the child's household derived from a distribution is not a disqualifying factor.

- (d) If the child has a permanent and total disability, the standard of living the child should reasonably expect to enjoy given the financial resources available to the child.
- 3. The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household, who are unable to support themselves and who are in need of support. If benefits are being paid by the United States department of veterans affairs to the conservator, such income may be expended only for the support of the protected person and the person's spouse and minor children, except on petition to and prior order of the court after a hearing.
- 4. Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.
- 5. A conservator, in discharging the responsibilities conferred by a court order and this section, shall implement the principles described in section 14-5408 to the extent possible.
- C. When a minor who has not been adjudged to have a disability under section 14-5401, subsection A, paragraph 2 attains majority, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.
- D. When the conservator is satisfied that a protected person's disability, other than minority, has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.
- E. If a protected person dies, the conservator may deliver to the court for safekeeping any will of the deceased protected person that may have come into the conservator's possession or deliver the will to the personal representative named in the will. If the will is delivered to the personal representative named in the will, a copy of the will shall be filed with the court in the conservatorship proceeding. If the will is filed with the court, the conservator shall inform the personal representative or a beneficiary named in the will that the conservator has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled to the estate. If any of the following situations exist, the conservator may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment:
  - 1. Forty days after the death of the protected person another person has not been appointed personal representative and an application or petition for appointment is not before the court.

2. Another person has not been appointed personal representative after the protected person's death, an application or petition for appointment is not before the court and the conservator is the person with priority as determined by a probated will, including a person who is nominated by a power conferred in a will.
  3. Another person has not been appointed personal representative after the protected person's death, an application or petition for appointment is not before the court, after the exercise of reasonable diligence the conservator is unaware of any unrevoked testamentary instrument relating to property located in this state and all the heirs of the protected person have nominated the conservator to exercise the powers and duties of a personal representative.
- F. The conservator may include in an application made pursuant to subsection D of this section a request to probate the will of the deceased protected person or to adjudicate that the protected person died intestate and to determine the protected person's heirs. On receipt of an application, the registrar, after making the findings required pursuant to section 14-3303, if applicable, shall issue a written statement of informal probate, or a statement of intestacy, and shall endorse the letters of the conservator. The registrar may also enter the will of the deceased protected person to probate. The statement of the registrar under this section shall have the effect of an order of appointment of a personal representative as provided in section 14-3308 and chapter 3, articles 6 through 10 of this title, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative. In exercising the powers and duties of a personal representative after the death of the protected person, the conservator is not required to account for the administration pursuant to section 14-5419 but is subject to the related duties of a personal representative for the administration.
- G. If a protected person dies, and on reasonable inquiry the conservator is unable to locate any person specified in section 36-831, subsection A, paragraphs 1 through 11 willing to assume the duty of burying the body of the decedent or making other funeral and disposition arrangements, the conservator may make reasonable burial or other funeral arrangements, the cost of which is a charge against the estate.
- H. The estate of a deceased protected person is liable for any unpaid expenses of the conservator's administration, and such expenses are a lien on property transferred by the conservator to the decedent's personal representative.

**14-5428. Claims against protected person; enforcement**

- A. A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:
1. The claimant may deliver or mail to the conservator a written statement of the claim

indicating its basis, the name and address of the claimant and the amount claimed.

2. The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within ninety days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.
- B. A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.
- C. If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration.

#### **14-5501. Durable power of attorney; creation; validity**

- A. A durable power of attorney is a written instrument by which a principal designates another person as the principal's agent. The instrument shall contain words that demonstrate the principal's intent that the authority conferred in the durable power of attorney may be exercised:
1. If the principal is subsequently a person with a disability or incapacitated.
  2. Regardless of how much time has elapsed, unless the instrument states a definite termination time.

#### **14-5604. Claim against estate for expenses**

- A. The public fiduciary has a claim for all of the following against the estate of the ward, protected person or decedent:
1. Reasonable expenses incurred in the execution of the guardianship, conservatorship or public administration.
  2. Compensation for the fiduciary's services and the fiduciary's attorney that the court in which the accounts are settled deems just and reasonable.

3. An annual assessment in lieu of bond of twenty-five dollars and one-fourth of one per cent of the amount of an estate greater than ten thousand dollars. A fiduciary shall not take this assessment from the ward's or protected person's estate if the ward or protected person is eligible for supplemental security income benefits or would be eligible for these benefits if that person were not in a public institution.
- B. The public fiduciary shall pay all funds received pursuant to this section to the county treasurer for deposit in the county general fund.

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

- A. Whenever the gross assets of an estate do not exceed in value twenty thousand dollars the public fiduciary may act without the issuance of letters testamentary or of administration by filing with the superior court a statement of administration showing the name and domicile of the decedent, the date and place of death and the name, address and relationship of each known heir or devisee. The filing of this statement has the same effect as the issuance of formal letters testamentary or of administration.
- B. In the event the gross assets of an estate in which the public fiduciary commences to act pursuant to a statement of administration later are found to exceed twenty thousand dollars the public fiduciary shall apply for letters for the estate.
- C. In the event the public fiduciary, acting in any estate pursuant to subsection A of this section, ascertains the names and whereabouts of persons believed to be heirs or devisees of the estate who are not shown in the statement of administration, the public fiduciary shall file a supplemental statement reflecting the new information.
- D. On filing the statement of administration, the public fiduciary may:
  1. Take possession of, collect, manage and secure the real and personal property of the decedent.
  2. Sell the decedent's real and personal property at private or public sale, without prior court order, if monies are needed to pay expenses of administration, funeral expenses or just claims against the estate and pay these expenses in the order prescribed in section 14-3805.
  3. Distribute real or personal property to the estate's personal representative if one is appointed after the statement of administration is filed.
  4. Distribute real and personal property to any successor to the decedent who presents an affidavit complying with the requirements of section 14-3971.
  5. Sell or abandon perishable property and other property of the decedent if necessary to preserve the estate.

6. Pursuant to section 14-5103, for the use and benefit of a minor heir or devisee who has no guardian, pay the share of an intestate estate or a devise due him if it does not exceed five thousand dollars.
  7. Make necessary funeral arrangements for the decedent and pay reasonable funeral charges with estate assets.
  8. Distribute allowances and exempt property pursuant to chapter 2, article 4 of this title.
  9. Except as otherwise limited by this section, act in accordance with the powers of a court appointed personal representative as prescribed in section 14-3715.
- E. No later than twelve months from the filing of the statement of administration, the public fiduciary shall file with the court an accounting and a proposed distribution and claim for fees if the estate is ready to be settled. If the estate is not ready to be settled the accounting shall contain a statement explaining the delay. The public fiduciary shall file subsequent accountings and explanations on an annual basis until the estate is settled.
- F. The public fiduciary shall mail a copy of the accounting, the claim for fees and a proposal for distribution to each person entitled to receive this information including heirs, devisees, known creditors and other persons who have demanded notice. Notification shall be by certified mail. Notice is not required if the public fiduciary cannot reasonably ascertain necessary names and addresses.
- G. A decree settling the account and approving the distribution and claim for fees may be entered without further notice or proceedings and with the same effect as in an accounting proceeding unless an objection or claim is properly filed with the court within thirty days after the public fiduciary mails an accounting pursuant to subsection F of this section.

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

- A. If the gross assets of the estate exceed twenty thousand dollars, the public fiduciary may file with the court a verified petition to preserve and protect estate property if action is needed to protect an estate but no probate proceedings have been filed and no affidavit of collection has been tendered pursuant to section 14-3971. The petition shall include the following:
1. The name and domicile of the decedent.
  2. The date and the place of death.
  3. The names, addresses and relationships of known heirs or devisees.
  4. A declaration that the gross assets of the estate are believed to exceed twenty thousand dollars.
  5. A declaration that the decedent died in the county or left real or personal property in the county or that personal property arrived in the county after the decedent's death.

6. A declaration that there is no person eligible to act as personal representative or that the personal representative named in the will has refused or neglected to act, is dead or his whereabouts are unknown or is not eligible to receive letters testamentary at the present time.
  7. A declaration that immediate action is necessary to make funeral arrangements and pay reasonable funeral charges or to preserve and protect the estate.
- B. The court may grant the petition and enter an order without prior notice and a hearing on a finding of good cause.
- C. If the court grants the petition, the public fiduciary shall send a copy of the petition and the court order to each known heir, devisee and interested party within ten business days of entry of the order.
- D. If the court grants the petition, the public fiduciary may take the following action unless otherwise limited by the court:
1. Take possession of, collect and secure the decedent's real or personal property located in the county.
  2. Make necessary funeral arrangements for the decedent and pay the reasonable funeral charges.
  3. Institute an inquiry as to any matter affecting the estate of the decedent.
  4. Sell perishable property and other property of the decedent if the estate requires this action.
  5. Defray the expenses of the fiduciary activities and the expenses incidental to the public fiduciary's application for letters from the decedent's estate.
  6. Pursuant to section 14-5103, for the use and benefit of a minor heir or devisee who has no guardian, pay the share of an intestate estate or a devise due that person if that share is less than five thousand dollars.
  7. Without prior court order, sell real or personal property with an estimated value of less than five thousand dollars if this is necessary to pay reasonable funeral expenses or to preserve and protect the assets of the estate and prevent waste.
  8. With prior court order and on reasonable notice to interested parties, sell real or personal property with an estimated net value of five thousand dollars or more if this is necessary to preserve and protect the assets of the estate and prevent waste.
- E. The public fiduciary may obtain subpoenas and subpoenas duces tecum from the court in order to conduct the inquiry under subsection D, paragraph 3 of this section. The court may hold a person in contempt if the person fails to comply with the subpoena.

- F. The expenses under subsection D, paragraph 5 of this section are a legal charge against the county if the decedent's estate is incapable of paying them.
- G. On receiving notice of the appointment of a personal representative of the estate or on receiving valid affidavits for succession to real or personal property, the public fiduciary shall immediately transfer to the personal representative or affiant the control and possession of the property. The public fiduciary may subtract any monies claimed as fiduciary fees and costs pursuant to section 14-5604. The public fiduciary shall file an accounting and claim for fees with the court and shall send copies by certified mail to the personal representative or the affiant and known heirs, devisees and interested parties. If no objections are filed with the court within thirty days of this notice, the court without further notice or hearing may approve and settle the account, approve claims by the public fiduciary against the estate and discharge the public fiduciary from further duties and liability.
- H. A person paying, delivering, transferring or issuing property or evidence of property is discharged and released to the same extent as if that person dealt with a personal representative of the decedent.
- I. The public fiduciary may begin an action to probate the decedent's estate if probate has not begun or an affidavit of succession to real and personal property is not submitted at least forty days after the public fiduciary files the petition to preserve and protect the estate.

**14-5651. Fiduciaries; licensure; qualifications; conduct; removal; exemption; definitions**

- A. Except as provided by subsection G of this section, the superior court shall not appoint a fiduciary unless that person is licensed by the supreme court. The supreme court shall administer the licensure program and shall adopt rules and establish and collect fees necessary for its implementation. The supreme court shall deposit, pursuant to sections 35-146 and 35-147, the monies collected pursuant to this subsection in the confidential intermediary and fiduciary fund established by section 8-135. At a minimum the rules adopted pursuant to this subsection shall include the following:
  - 1. A code of conduct.
  - 2. A requirement that fiduciaries post a cash deposit or surety bond with the supreme court.
  - 3. A requirement that on appointment a fiduciary who is serving as a guardian or conservator must provide written information to the ward or protected person and all persons entitled to notice pursuant to section 14-5309 or 14-5405 that the fiduciary is licensed by the supreme court and subject to regulation by the supreme court. The language of the written information provided by the fiduciary shall be prescribed by the supreme court and shall include reference to the code of conduct that all licensed fiduciaries must follow.
  - 4. Minimum qualifications.
  - 5. Biennial renewal of licensure.

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

supreme court may exempt a fiduciary from the requirements of this section for good cause.

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

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

J. This section applies to any supreme court licensed fiduciary who is acting as a guardian, conservator, personal representative, trustee or agent under a power of attorney, whether or not that person is acting pursuant to court appointment.

K. For the purposes of this section:

1. "Fiduciary" means:

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

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

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

(d) The department of veterans' services.

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

#### **14-10804. Prudent administration**

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

#### **14-10901. Prudent investor rule**

A. Except as provided in subsection B, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule requirements of this article.

- B. The prudent investor rule is a default rule and may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust.
- C. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

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

- A. A health professional, emergency medical technician, home health provider, hospital intern or resident, speech, physical or occupational therapist, long-term care provider, social worker, peace officer, medical examiner, guardian, conservator, fire protection personnel, developmental disabilities provider, employee of the department of economic security or other person who has responsibility for the care of a vulnerable adult and who has a reasonable basis to believe that abuse, neglect or exploitation of the adult has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to the adult protective services central intake unit. The guardian or conservator of a vulnerable adult shall immediately report or cause reports to be made of such reasonable basis to the superior court and the adult protective services central intake unit. All of the above reports shall be made immediately by telephone or online.
- B. If an individual listed in subsection A of this section is an employee or agent of a health care institution as defined in section 36-401 and the health care institution's procedures require that all suspected abuse, neglect and exploitation be reported to adult protective services as required by law, the individual is deemed to have complied with the requirements of subsection A of this section by reporting or causing a report to be made to the health care institution in accordance with the health care institution's procedures.
- C. An attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of a vulnerable adult or a person who has responsibility for any other action concerning the use or preservation of the vulnerable adult's property and who, in the course of fulfilling that responsibility, discovers a reasonable basis to believe that abuse, neglect or exploitation of the adult has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to the adult protective services central intake unit. All of the above reports shall be made immediately by telephone or online.
- D. Reports pursuant to subsections A and C of this section shall contain:
  - 1. The names and addresses of the adult and any persons having control or custody of the adult, if known.
  - 2. The adult's age and the nature and extent of the adult's vulnerability.
  - 3. The nature and extent of the abuse, neglect or exploitation.
  - 4. Any other information that the person reporting believes might be helpful in establishing

the cause of the abuse, neglect or exploitation.

- E. Any person other than one required to report or cause reports to be made in subsection A or C of this section who has a reasonable basis to believe that abuse, neglect or exploitation of a vulnerable adult has occurred may report the information to a peace officer or to the adult protective services central intake unit.
- F. A person having custody or control of medical or financial records of a vulnerable adult for whom a report is required or authorized under this section shall make those records, or a copy of those records, available to a peace officer or adult protective services worker investigating the vulnerable adult's abuse, neglect or exploitation on written request for the records signed by the peace officer or adult protective services worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.
- G. If reports pursuant to this section are received by a peace officer, the peace officer shall notify the adult protective services central intake unit as soon as possible and make that information available to them.
- H. A person required to receive reports pursuant to subsection A, C or E of this section may take or cause to be taken photographs of the abused adult and the vicinity involved. Medical examinations, including radiological examinations of the involved adult, may be performed. Accounts, inventories or audits of the exploited adult's property may be performed. The person, department, agency or court that initiates the photographs, examinations, accounts, inventories or audits shall pay the associated costs in accordance with existing statutes and rules. If any person is found to be responsible for the abuse, neglect or exploitation of a vulnerable adult in a criminal or civil action, the court may order the person to make restitution as the court deems appropriate.
- I. If psychiatric records are requested pursuant to subsection F of this section, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:
  - 1. Personal information about individuals other than the patient.
  - 2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.
- J. If any portion of a psychiatric record is excised pursuant to subsection I of this section, a court, on application of a peace officer or adult protective services worker, may order that the entire record or any portion of the record containing information relevant to the reported abuse, neglect or exploitation be made available to the peace officer or adult protective services worker investigating the abuse, neglect or exploitation.
- K. A licensing agency shall not find that a reported incidence of abuse at a care facility by itself is sufficient grounds to allow the agency to close the facility or to find that all residents are in imminent danger.

- L. Retaliation against a person who in good faith reports abuse, neglect or exploitation is prohibited. Retaliation against a vulnerable adult who is the subject of a report is prohibited. Any adverse action taken against a person who reports abuse, neglect or exploitation or a vulnerable adult who is the subject of the report within ninety days after the report is filed is presumed to be retaliation.
- M. A person who violates this section is guilty of a class 1 misdemeanor, except if the failure to report involves an offense listed in title 13, chapter 14, the person is guilty of a class 6 felony.

## RULES OF PROBATE PROCEDURE

### **Rule 13. Probate Information Form and Notice of Change of Contact Information Form**

(a) **Definitions.** For purposes of this rule,

- (1) “*Contact information*” means the information designated on the Probate Information Form as contact information; and
- (2) “*Fiduciary*” means a personal representative, guardian, or conservator, whether temporary or permanent.

(b) **Probate Information Form.**

- (1) *Generally.* A party who requests the appointment of a personal representative must file Form 11, Probate Information Form for Decedent's Estate. A party who requests the appointment of a guardian or conservator, whether temporary or permanent, must file Form 12, Probate Information Form for Guardianship/Conservatorship.
- (2) *Confidentiality.* The court must maintain a Probate Information Form filed under this rule as a confidential document under Rule 8.
- (3) *No Service.* Except as required by the court, a party who files a Probate Information Form is not required to provide other parties or interested persons with a copy of the form.
- (4) *Non-Compliance.* The clerk may not reject a petition or application because the filing party failed to provide all the information required in the Probate Information Form.
- (5) *Duty to Correct.* A party who has filed a Probate Information Form and who subsequently discovers that the date of birth or social security number contained in that Probate Information Form is incorrect must file an amended Probate Information Form with the correct information within 10 court days after discovery.

(c) **Notice of Change of Contact Information.**

- (1) *Generally.*
  - (A) *Change in Contact Information for Fiduciary.* If a fiduciary's contact information changes during the fiduciary's appointment in a probate case, the fiduciary must file Form 13, Notice of Change of Fiduciary's Contact Information, within 10 court days after such change occurs.
  - (B) *Change in Contact Information for Ward.* If a ward's contact information changes, the ward's guardian must file Form 14, Notice of Change of Ward's Contact Information, within 3 court days of learning of such change.

- (2) *No Confidentiality.* Unless the court orders otherwise, a Notice of Change of Contact Information filed under this rule must be maintained as part of the public record.
- (3) *Service.* Unless the court orders otherwise, a person who files the Notice of Change of Contact Information Form must mail or deliver a copy to the subject person's court-appointed attorney, the subject person's statutory representative, guardian ad litem, and all parties to the probate case in which the form has been filed.
- (4) *Non-Compliance.* Absent good cause, the fiduciary must pay all costs of the court or the estate that result from a failure to timely provide a Notice of Change of Contact Information.