

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ARIZONA CODE OF JUDICIAL)	Administrative Order
ADMINISTRATION § 7-205:)	No. 2013 - <u>13</u>
DEFENSIVE DRIVING)	(Affecting Administrative
)	Order No. 2011-70)
)	

An amendment to the above-captioned section of the Arizona Code of Judicial Administration having come before the Arizona Judicial Council on December 13, 2012, and having been approved and recommended for adoption,

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

IT IS ORDERED that Arizona Code of Judicial Administration § 7-205 is amended as indicated on the attached document. All other provisions of § 7-205, as originally adopted, remain unchanged and in effect.

Dated this 30th day of January, 2013.

REBECCA WHITE BERCH
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 7: Administrative Office of the Courts
Chapter 2: Certification and Licensing Programs
§ 7-205: Defensive Driving

A. through D. [no changes]

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

1. Eligibility for Certification as a School. An applicant for certification as a defensive driving school shall:

a. through i. [no changes]

j. Provide articles of incorporation and letters of good standing from the Arizona Corporation Commission ~~or the Secretary of State, or if the applicant uses ADM, from comparable entities of the state where the business is incorporated or licensed.~~

k. [no changes]

l. File an administrative, operational and financial procedures manual detailing the applicant's processes for compliance with all Arizona statutes, ACJA § 7-201, this section, and court or local rules. The administrative procedures manual shall include specific detail on the process an ADM school shall use to determine a positive identification of the individual enrolled in the defensive driving course, in compliance with subsection (F)(25)(d)(5)(b). This detail shall include whether or not the ADM school will utilize a third party process for verification of the user identity. Once approved, a school may not change the procedures until the school obtains approval from the board.

m. through x. [no changes]

2. Eligibility for Certification as an Instructor. In addition to the requirements of ACJA § 7-201(E), for qualification as an instructor, an individual shall:

a. Be at least 21 years old.

b. Have a high school diploma or general equivalency diploma.

c. Be a legal resident or citizen of the United States.

d. Hold a valid driver license issued by the state of residence.

- e. Pass a certification examination testing the applicant's knowledge, skills, and abilities as an instructor.
- f. Attach a certified current 60-month motor vehicle record to the application.
- g. If the applicant is currently serving as an active law enforcement officer where any portion of their duties includes the authority to issue citations, the applicant may submit a completed application only if the applicant has obtained a waiver from the presiding judge of the superior court in the county where the applicant is instructing, allowing the officer to serve as an instructor.

(1) The applicant shall use the application for waiver form provided by the AOC and shall complete the following information on the form:

- (a) Description of the officer's position and duties and if the officer's position includes the authority to issue citations, the number of citations the officer issued in the past twelve months;
- (b) The jurisdiction where the officer intends to serve as a defensive driving instructor and whether that conflicts with the jurisdiction where the applicant serves as a law enforcement officer;
- (c) An acknowledgement by the officer that the officer, if certified as an instructor, shall not refer to the officer's employment as a law enforcement officer when teaching a defensive driving class; and
- (d) An acknowledgement by the officer that if the officer's responsibilities change such that the officer is routinely issuing citations the officer will notify the presiding judge within ten days.

(2) The presiding judge will consider all of the factors listed in subsection (E)(2)(g)(1) when considering the request for waiver and may grant or deny the request.

3. and 4. [no changes]

F. Role and Responsibilities of Certificate Holders. In addition to the requirements of ACJA § 7-201(F), each school shall:

1. through 4. [no changes]

5. Designate a principal who holds contracting authority for the school, with whom division staff can immediately make contact concerning any process or procedure of the school or court operation. The principal shall:

a. through j. [no changes]

k. Provide the total school fee to attend the school's course in ~~any and~~ all information or materials provided to students, including the school's website. This total fee must be

~~inclusive of~~ include all fees and costs assessed and retained by the school for the student to attend and complete the school's course. This total fee must be provided to the student ~~prior to~~ before the student begins the registration process. The school shall provide the total school fee information in a conspicuous ~~area~~ place on the first page of the school's Arizona web site or and on published materials in a manner that is readily noticeable to the public and that is in accordance with the format specified by the AOC for all schools. A school shall inform the student that it will report the student's completion to the court having jurisdiction for no additional charge.

- l. A defensive driving school shall post on the opening page or opening Arizona page of their internet website the following information:
 - (1) The total cost to attend defensive driving for diversion fees and charges in the format specified by the AOC, which shall include the following information:
 - ~~(2)~~ (a) The school's total fee to attend reflecting all fees the school may charge charges for the student to attend and complete the course and processing of the completion to the court;
 - (b) The state fee;
 - (c) The state surcharge;
 - (d) A link to an additional webpage that identifies the court diversion fee for the court where the student's citation is pending or the specific diversion fee for each court;
 - (e) That the total cost for the student to attend the school is the total of the school fee, state fee, state surcharge and the court diversion fee;
 - ~~(3)~~ The court diversion fee;
 - ~~(4)~~ The State surcharge;
 - ~~(5)~~ The State fee;
 - ~~(6)~~ The eligibility requirements to attend a defensive driving school;
 - ~~(7)~~ The instruction that a student must complete the course 7 days prior to their arraignment date;
 - ~~(8)~~ The violations eligible for defensive driving diversion or a link to the Supreme Court website listing eligible violations;
 - ~~(9)~~ A list of the information required for course registration:
 - (a) Traffic citation;
 - (b) Government issued identification;
 - (c) Payment to be made prior to the start of class or program;
 - ~~(10)~~ The class or program instructional times;
 - ~~(11)~~ School refund policy; and
 - ~~(12)~~ Link to the Supreme Court's website and toll-free telephone number to further assist the public.
- m. Report the school fee up to two times each year, effective either on April 1 or October 1 , or on both dates. If a school charges a different fee, depending upon the municipality or the county in which the student was cited, the school shall report each fee, identifying the associated city or county. A school shall notify division staff by September 1 for

changes effective October 1 and by March 1 for changes effective April 1 regardless of whether the school changes the fee or retains the current fee, using the form provided by division staff. Any notice received from a school after the March 1st deadline will not take effect on April 1st but will be delayed until the next change date on October 1. Any notice received from a school after the September 1 deadline will not take effect on October 1st but will be delayed until the next change date on April 1.

- n. If an ADM school, ensure the examination is included in the online course; and
- o. In addition to the provisions contained in ACJA § 7-201(H)(6)(c), a certificate holder is subject to disciplinary action if the board finds the certificate holder has failed to cooperate with or supply information to any court or court staff by the time specified in any request.

6. through 31. [no changes]

32. Instructors. In addition to the requirements of ACJA § 7-201(F), an instructor may only teach defensive driving courses or contract to provide assistance under the auspices of a certified school.

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

- 1. Expiration Date. All school and instructor certificates shall expire at midnight, October 31st of odd numbered years.
- 2. Schools. Each school seeking renewal of certification shall:
 - a. Pay the specified renewal fee in subsection (K), ~~calculated by division staff based on the total number of students completing a defensive driving course during the previous two state fiscal years;~~
 - b. Pay any outstanding assessed ineligible completion processing fee;
 - c. Provide division staff any changes in administrative, operational, or financial procedures;
 - d. Provide division staff any changes in curriculum content by electronic means ~~only~~; and
 - e. Provide division staff any changes in third party contracts.
- 3. Instructors. All instructors shall:
 - a. Apply for renewal by submitting a certified motor vehicle record for the prior 24 months preceding the date the applicant files the renewal application with division staff.

- ~~b. Teach a minimum of eight classes in the 24 months of each renewal cycle. An instructor whose certificate expires less than one year from the effective date of certification shall teach on a pro-rated basis at the rate of at least one class for every two months the instructor has been certified. The employing or contracted school shall maintain records of classes taught for each employed or contracted instructor and shall provide the records on request of division staff or the board.~~
- ~~eb. Continuing education. During each renewal cycle, all instructors shall attend a total of twelve hours of continuing education, six in each calendar year as required by the continuing education policies in subsection (L).~~
- ~~dc. Pass the examination for certification required pursuant to subsection (E)(2)(e) to qualify for renewal of certification.~~

~~4. Restricted Certification-~~

- ~~a. In order for a school to cover their scheduled defensive driving courses in the event of an emergency where an instructor is not available to teach a course, an owner or principal of a school may apply for, and the board may grant a restricted certificate under the following conditions:~~
 - ~~(1) The owner or principal shall apply for the restricted certificate on a form approved by the board;~~
 - ~~(2) The owner or principal holds a valid certificate as an instructor and meets all renewal requirements, except the requirement for the number of classes taught; and~~
 - ~~(3) The owner or principal has not had a certificate that has been revoked or suspended.~~
- ~~b. To remain eligible to renew a restricted certificate, owners and principals shall complete all renewal requirements each renewal cycle except the number of defensive driving courses taught pursuant to subsection (G)(3).~~

~~54. Denial of Renewal. In addition to the requirements in ACJA § 7-201(G), the following requirements apply:~~

- ~~a. The board may refuse to renew the certificate of any instructor who fails to meet the standards of this section and ACJA § 7-201 on two or more successive classroom monitoring sessions, completed more than 30 days apart.~~
- ~~b. If an instructor's certification lapses or is denied due to failure to meet renewal requirements, the instructor is not eligible to apply for subsequent certification for six months.~~

H. and I. [no changes]

J. Codes of Conduct.

1. Schools. This code of conduct is adopted by the supreme court to apply to all schools certified by the Arizona Supreme Court, pursuant to A.R.S. § 28-3395. The purpose of this code of conduct is to establish minimum standards of performance for schools.
 - a. Curriculum. A school shall exercise extreme care and diligence and ensure all materials used in the instruction of defensive driving courses, whether in a classroom or in an ADM format, are in the public domain or original and not copied without the appropriate written permission.
 - (1) A school shall make all reasonable efforts to secure accurate and current information in its presentations in defensive driving courses.
 - (2) A school shall not use any curriculum material or teaching methods not approved by the board.
 - b. Ethics. A school shall not operate in a manner reflecting adversely on the judiciary, board, courts, division staff, or other agencies involved in the administration of justice including law enforcement agencies and attorneys.
 - (1) A school shall maintain the confidentiality of all defensive driving student records, only transmit confidential information by U.S. Post, facsimile, or a secure electronic file, and shall not disclose defensive driving database information to any third party. A school may disclose information only upon presentation of reasonable evidence that the individual seeking the information is the same individual who is the subject of the record. A school shall refer all third party requests for information to division staff.
 - (2) A school shall not perform nor permit its employees, representatives, or third party contractors to perform judicial functions or functions for court staff. School employees, representative, or third party contractors shall not volunteer assistance to court staff in their official duties.
 - (3) In addition to the provisions of ACJA § 7-201(H)(6)(c), a school and its staff shall comply with all requests for communications or information from court staff.
 - (4) A school shall not use the Arizona Supreme Court logo or any other court logo on any of the school materials or in any way imply that the Arizona Supreme Court or any other Arizona court recommends or prefers a particular certified school. A certified school may provide information to the public that the school is certified by the Arizona Supreme Court, utilizing only the name associated with the active and valid certification of the school.
 - c. Classrooms. A school shall maintain the appropriate decorum in the classroom to promote an atmosphere of learning for students. A school shall:
 - (1) Direct the instructors to require students to be punctual and attentive;

- (2) Direct the instructors to prevent or control disruptions by students interfering with the conduct of the defensive driving course or distressing other students;
 - (3) Direct the instructors to prohibit students from sleeping or engaging in other activities that are not a part of the school's approved defensive driving course during the classroom instruction;
 - (4) Direct the instructors to forbid the use of electronic devices or laptop computers by students causing inattention or distractions from the learning of the student or other students in the defensive driving course; and
 - (5) Not use a facility for a classroom presentation which may create distractions before ~~prior~~, during, or after the presentation.
- d. Compliance. A school shall perform all duties and discharge all obligations in accordance with current Arizona law and the administrative rules, court orders, administrative orders, ACJA § 7-201, and this section.
- e. Advertising. A school shall not permit any erroneous, deceptive, or misleading advertising by omission, material misrepresentation, dishonesty, or fraud. A school shall not represent that attendance at the school is free or that the school is recommended or preferred by the Arizona Supreme Court or any other Arizona court. A school shall not permit advertising during the presentation of its approved course. A school shall not provide any endorsements, rewards, or incentives to a student in order to:
- (1) Receive reduced costs to attend the school's course by responding to an advertisement or taking a survey provided by the advertiser or school;
 - (2) Waive any costs or fees to attend the course;
 - (3) Misrepresent the costs to attend the course; or
 - (4) Misrepresent other schools' course offerings.

2. [no changes]

K. Fee Schedule.

1. Initial School Certification Fees for Two Year Period. Fee

(Fee is per each course delivery method utilized by a school)

~~a. Application year 2011:~~

~~(1) Certification expiring more than one year after application date — \$ 3000.00~~

~~(2) Certification expiring less than one year after application date — \$ 1500.00~~

~~ba. Application year 2012:~~

~~(1) Initial Certification expiring more than one year after application date \$ 4000.00~~

- ~~(2) Certification expiring less than one year after application date \$ 2000.00~~
- eb. Application year 2013 and after:
- ~~(1) Initial Certification expiring more than one year after application date \$ 5000.00~~
- ~~(2) Certification expiring less than one year after application date \$ 2500.00~~
2. Initial Instructor Certification Fees for Two Year Period.
- a. Initial Certification expiring more than one year after application date \$ 50.00
- b. ~~Certification expiring less than one year after application date \$ 25.00~~
3. Examination Fees for Individuals.
- a. Applicants for certification examination \$ 50.00
- b. Re-examinations \$ 50.00
- (For any applicant who did not pass the examination on the first attempt. The \$50.00 fee applies to each re-examination.)
- c. Re-registration for examination \$ 50.00
- (For any applicant who registers for an examination date and fails to appear at the designated site on the scheduled date and time.)
4. Renewal Certification Fees for Two Year Period.
- a. School renewal
- ~~(1) Renewal year 2011:~~
- Renewal fee for all schools \$ ~~500.00~~
- ~~(2) Renewal year 2013:~~
- Renewal fee for all schools \$ 750.00
- ~~(3) Renewal year 2015 and after:~~
- Renewal fee for all schools \$ 1000.00

b. Instructor renewal	\$ 50.00
c. Late renewal fees	
(1) School	\$ 50.00
(2) Instructor	\$ 50.00
d. Delinquent continuing education	\$ 50.00
5. Miscellaneous Fees.	
a. Replacement of certificate or name change	\$ 25.00
b. Public record request per page copy	\$ 00.50
c. Certificate of correctness of copy of record	\$ 18.00
d. Reinstatement application	\$ 100.00 <u>\$ 1000.00</u>
(Application for reinstatement to certification after suspension or revocation of certification.)	
e. Ineligible student completion processing fee (per occurrence)	\$ 20.00
f. Implementation of an additional modality <u>delivery method</u> application fee <u>for a currently certified school</u>	\$ 2000.00

L. [no changes]