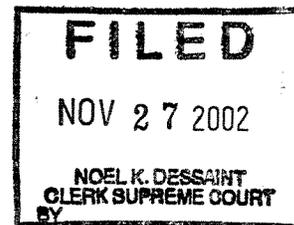


IN THE SUPREME COURT OF THE STATE OF ARIZONA



In the Matter of:	)	
	)	
ARIZONA CODE OF JUDICIAL	)	Administrative Order
ADMINISTRATION §7-204:	)	No. 2002- <u>110</u>
PRIVATE PROCESS SERVER	)	(Replacing Administrative Order
	)	No. 94-20)
	)	

The above captioned provision having come before the Arizona Judicial Council on October 17, 2002, and having been approved and recommended for adoption,

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution, Arizona Revised Statutes §11-445(H), and Rule 4, Arizona Rules of Civil Procedure,

IT IS ORDERED that the above captioned provision, attached hereto, including Appendix A, the Code of Conduct, is adopted as a section of the Arizona Code of Judicial Administration replacing Administrative Order No. 94-20, and the Policies and Procedures, Statewide Private Process Servers, Registration Process, as adopted by David K. Byers, Administrative Director of the Courts on March 22, 1994.

IT IS FURTHER ORDERED that this section of the Arizona Code of Judicial Administration is effective on January 1, 2003.

IT IS FURTHER ORDERED that, pursuant to subsection F(7) of this code section, all certified process servers shall begin to accrue the required ten hours of continuing education hours every twelve months from and after January 1, 2003. From and after January 1, 2004, certified process servers who submit an application for renewal of certification shall submit with the application, documentation of completion of continuing education hours in compliance with subsection F(7).

Dated this 27th day of November, 2002.

FOR THE COURT:

CHARLES E. JONES  
Chief Justice

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 7: Administrative Office of the Courts**  
**Chapter 2: Certification and Licensing Programs**  
**Section 7-204: Private Process Server**

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

"Administrative Director" means the director of the Administrative Office of the Courts, Arizona Supreme Court, or the director's designee.

"Administrative Office" means the Administrative Office of the Courts, Arizona Supreme Court.

"Code Section" means the referenced provision of the Arizona Code of Judicial Administration.

"Complainant" means a person or organization that initially files a complaint regarding the conduct of a private process server. The complainant is not a party to the proceeding.

"Days" means the same as provided by Arizona Rules of Civil Procedure, that is: the computation of days is as follows: If ". . . less than 11 days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation . . ." and if ". . . 11 days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation."

"Formal Charges" means a document setting forth specific acts of misconduct by a certified private process server upon a determination of probable cause.

"Formal Disciplinary Proceedings" means filing of formal charges specifying misconduct by a certified private process server. Formal disciplinary proceedings commence after a finding there is probable cause to believe a private process server has committed a violation of the administrative code, statutes or court rules pertaining to service of process that if true, would warrant a public sanction. The public sanction could include restrictions on the certificate, or suspension or revocation of the certificate.

"Government Employee Process Server" means an individual who, in the normal scope of the individual's responsibilities as a government employee, serves process for the governmental agency that employs the individual.

"Informal Disciplinary Proceedings" means resolution of a complaint prior to the filing of formal charges. An informal disciplinary proceeding may result in imposition of sanctions, but the sanction may not include restrictions on a certificate, suspension or revocation of a certificate.

"Presiding Judge" means the presiding judge of the Arizona Superior Court or the presiding judge's designee.

"Private Process Server" means a person, duly appointed or registered pursuant to the requirements in A.R.S. §11-445(H), this code section, and any other applicable statute or rule. As defined by A.R.S. §11-445(H), a private process server:

. . . may serve all process, writs, orders, pleadings or papers required or permitted by law to be served prior to, during, or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable, except writs or orders requiring the service officer to sell, deliver or take into the officer's custody persons or property, or as may otherwise be limited by rule established by the supreme court. A private process server is an officer of the court.

"Program coordinator" means the staff appointed by the director to administer the program.

"Provisional Certification" means a temporary certificate issued by the presiding judge which expires 120 days after the presiding judge grants it.

"Revoked" means the permanent invalidation or cancellation of a private process server's certificate.

"Standard Certification" means a certificate issued by the presiding judge once an applicant meets all the requirements for certification of a private process server.

"Suspended" means the private process server's certificate is not revoked, but the certificate holder is not permitted to exercise the privileges of the certificate for a set period of time as the result of a disciplinary action.

"Valid" means a certificate issued by the presiding judge that is currently in effect and not suspended or revoked.

**B. Applicability.** This code section applies to the certification of private process servers pursuant to A.R.S. §11-445(H) and the Arizona Rules of Civil Procedure. This code provision applies to the application, certification and discipline of all private process servers in the State of Arizona. This code section governs private process server certification separately and without reference to §7-201, General Provisions, of the Arizona Code of Judicial Administration. For uniformity, consistency and ease of reading the term "certification" refers to either certification or registration.

**C. Purpose.** For eligibility to act as a private process server in Arizona, all persons shall obtain certification and comply with the requirements of A.R.S. §11-445(H), the Arizona Rules of Civil Procedure, administrative orders and this administrative code section adopted by the Arizona

Supreme Court to govern private process servers. Certified private process servers may serve all process, writs, orders, pleadings or papers required or permitted by law for service prior to, during, or independent of a court action, including all documents required or permitted for service by a sheriff or constable, except writs or orders requiring the service officer to sell, deliver or take into custody persons or property, or as otherwise limited by this code section. Pursuant to Arizona Rules of Civil Procedure 4(e), a certified " . . . private process server . . . " is " . . . entitled to serve in such capacity for any court of the state anywhere within the State."

#### **D. Administration.**

1. Role and Responsibilities of the Administrative Director. The director shall have the authority to approve or disapprove matters of administration of the Private Process Server Program that involve the expenditure of program funds. The director may vest in any other person, acting in the director's name and by delegated authority, the authority to exercise or discharge any power, duty or function, normally belonging to the director, whether ministerial or discretionary.
2. Role and Responsibilities of the Program Coordinator. The director shall designate a program coordinator. The program coordinator is responsible for the administration of the Private Process Server Program in compliance with the law, Arizona Rules of Court, and Arizona Supreme Court administrative orders and this code section. The program coordinator may delegate any duties and responsibilities to staff.
  - a. The program coordinator shall perform tasks of administration of the Private Process Server Program to assist in the decentralized administration of the program in each county in Arizona. The program coordinator shall provide updates to the clerk of the superior court; make recommendations regarding matters pertaining to certification, complaints and investigations; and all other matters relevant to certified private process servers.
  - b. The program coordinator shall maintain a list of certified private process servers and shall post this list on the judicial department website. The judicial department website shall include each certificate holder's name and certificate number. The program coordinator may charge for the costs of providing copies of the certification list or any other public records of the program.
3. Role and Responsibilities of the Clerks of the Superior Court. The clerk of the superior court in each county is responsible for distributing and accepting applications and application materials, administering and grading examinations, maintaining records, including the register of certified process servers pursuant to Rule 4(e), Arizona Rules of Civil Procedure, accepting fee payments, coordinating the receipt of application materials for the presiding judge, notifying the program coordinator of certificates issued, changes of address, renewals, complaints, investigations and final decisions regarding discipline.

- a. The clerk of the superior court in each county may assign any duties and responsibilities to staff. Annually the clerk shall file a letter with the program coordinator, naming the staff assigned responsibility for administering the Private Process Server Program along with a current address, phone number and e-mail address of each staff member.
  - b. The clerk of the superior court in each county shall report quarterly to the program coordinator all additions, deletions and revisions in the certification list. The clerk of the superior court shall maintain a current certification list of all private process servers of certificate holder status on a form approved by the director.
  - c. The clerk of the superior court in each county shall provide a quarterly report listing all complaints, investigations pending completion and informal and formal disciplinary proceedings to the program coordinator who will maintain the information for use by the presiding judges as needed.
  - d. The clerk of the superior court in each county shall notify the presiding judge if it appears a private process server has violated this code section.
4. Role and Responsibilities of the Presiding Judges of the Superior Court. The presiding judge in the county of residence of the applicant, where the applicant applies for certification, is responsible for reviewing all application materials including criminal history information. The presiding judge is also responsible for granting or denying certification to private process servers and granting or denying reexamination on a previously failed examination. The presiding judge receives complaints pursuant to subsection H of this code section, and investigates, initiates and adjudicates disciplinary proceedings. The presiding judge may vest in another person the authority to exercise or discharge any power, duty or function originally vested in the presiding judge, whether ministerial or discretionary. The designated person shall exercise these powers while acting in the presiding judge's name and by delegated authority.

#### **E. Initial Certification.**

1. Exemptions from Certification. The following persons are exempt from the certification requirements:
  - a. Any person specially appointed by the court pursuant to Rule 4(d), Arizona Rules of Civil Procedure;
  - b. Any party to an action or that party's attorney serving process pursuant to Rule 4(d), Arizona Rules of Civil Procedure; and
  - c. Any person serving a subpoena pursuant to Rule 45, Arizona Rules of Civil Procedure.

2. Qualification for Application. Any person if qualified pursuant to subsection E(2)(a) or (b) of this code section may apply for certification.

a. Qualification for Individual Certification. To become certified or eligible for certification an applicant shall meet the eligibility requirements and fulfill all the requirements of subsection E(2)(c)(1) through (7) of this code section and, pursuant to Rule 4(d) and Rule 4(e), Arizona Rules of Civil Procedure:

- (1) ". . . has been a bona fide resident of the State of Arizona for at least one year immediately preceding the application . . ." for certification; and
- (2) ". . . shall be not less than twenty-one (21) years of age . . . ."

b. Government Employee Process Servers.

- (1) An individual who serves process entirely within the scope of the individual's responsibility as a government employee shall apply for certification and demonstrate the ability to pass the examination and meet certification criteria. As provided in A.R.S. §11-445(H), a government employee shall submit a completed fingerprint card and pay the applicable fees pursuant to subsection E(2)(c)(4) of this code section. Government employee process servers are not subject to any fees other than the fingerprint fee.
- (2) A government employee process server may carry any employer-issued identification that accurately identifies the employee as a government employee process server in addition to the identification card issued by the clerk of the superior court pursuant to subsection E(4) of this code section.
- (3) Government employee process servers who serve process in any capacity outside the scope of employment as a government employee process server shall obtain certification pursuant to this code section and shall follow all policies that apply to private process servers when serving process outside the scope of employment as a government employee process server.

c. Procedures for Application. To apply for certification, an applicant shall:

- (1) Provide a completed application for certification on an approved form obtained from and filed with the clerk of the superior court in the county of residence of the applicant. The applicant shall sign the application and have it duly verified under oath;
- (2) Execute an affidavit stating, pursuant to Rule 4(e), Arizona Rules of Civil Procedure ". . . that the applicant will well and faithfully serve process in accordance with the law . . ." and the applicant is and was a legal resident of the State of Arizona for at least one year prior to application and has continually resided in Arizona during this time period. The affidavit may include relevant language stating the applicant

understands the need to be available to testify and that providing testimony regarding the service of process is a common and inherent duty to this profession;

- (3) Pass an examination administered by the clerk of the superior court as prescribed in subsection E(3) of this code section;
- (4) Pursuant to A.R.S. §11-445(H):

. . . furnish a full set of fingerprints to enable a criminal background investigation to be conducted to determine the suitability of the applicant. The completed applicant fingerprint card shall be submitted with the fee prescribed in section 41-1750 to the department of public safety. The applicant shall bear the cost of obtaining the applicant's criminal history record information. The cost shall not exceed the actual cost of obtaining the applicant's criminal history record information. Applicant criminal history records checks shall be conducted pursuant to section 41-1750 and Public Law 92-544;

- (a) The applicant is responsible for providing the clerk of the superior court with a readable fingerprint card. The applicant shall pay all costs or fees attributable to any subsequent re-fingerprinting and resubmission of fingerprints due to unreadable prints. The applicant shall only use the fingerprint card issued in the application packet. A law-enforcement agency shall perform the fingerprinting;
  - (b) The clerk of the superior court shall submit completed applicant fingerprint cards and the fees to the Arizona Department of Public Safety (ADPS). Pursuant to A.R.S. §11-445(H), ". . . The department of public safety is authorized to exchange the submitted applicant fingerprint card information with the federal bureau of investigation for a federal criminal records check. . . ; "
  - (c) If definitive fingerprints are not obtainable, the clerk of the superior court shall require the applicant to make a written statement, under oath, that the applicant has no prior arrests, charges, indictments, or felony or misdemeanor convictions other than as disclosed on the application. If the applicant is unable to provide this statement the clerk of the superior court shall refuse to accept the application;
- (5) Upon the request of the presiding judge or designee, provide additional background information;
  - (6) Pay all fees as authorized by law to the clerk of the superior court pursuant to A.R.S. §12-284; and
  - (7) Provide two color photographs, (2" X 2"), and references as required by policy adopted by the director.

3. Examination.

- a. Initial Examination. Each applicant for certification or renewal shall personally take and pass the examination provided by the director and administered and scored by the clerk of the superior court. The clerk of the superior court shall give each applicant an initial examination.
- b. Reexamination. If the applicant fails the initial examination, the applicant may sit for one reexamination. The examination provided to the applicant for reexamination shall be a different examination than the one the applicant used for the initial examination. The applicant shall take the reexamination within 90 days of the date of filing the application. If the applicant fails the reexamination, the applicant shall wait 90 days from the date of the reexamination to submit a request for an additional reexamination pursuant to subsection E(3)(b)(1) of this code section.
  - (1) The applicant may submit a request in writing addressed to the presiding judge requesting consideration for an opportunity to reapply and sit for the examination an additional time. Proof of attendance and satisfactory completion shall accompany the written request for a course of study specific to the private process server profession. If the presiding judge approves reexamination, the entire application process begins again, including the payment of fees. The presiding judge has the discretionary authority to deny or approve a request for reexamination.
- c. The director shall provide multiple versions of the examination to the clerk of the superior court, and the clerk of the superior court may not use any other examinations. Applicants and the public may not obtain copies of the examination.
- d. The director shall establish the passing score on the examination.
- e. The clerk of the superior court shall communicate the applicant's examination score verbally or in writing to the applicant not more than ten days from the date the applicant took the examination. If the applicant passes the examination, the applicant will receive the examination score. If the applicant fails the examination, the clerk of the superior court shall provide the applicant with the examination score, an indication of the general areas of the statutes, rules, code sections and case law where the applicant missed questions, and the procedures for reexamination.
  - (1) An applicant may, on written request, review the applicant's examination papers and grades under the terms and conditions prescribed by the director.
    - (a) The applicant shall not copy materials provided for the applicant's review.
    - (b) The applicant shall conduct the review during business hours in the presence of program staff.

4. Decision Granting Provisional and Standard Certification. If the presiding judge is satisfied an applicant meets the qualifications for certification, the clerk of the superior court, upon order of the judge, shall promptly issue certification with an identification card to an applicant qualified for certification in accordance with this code section. Pursuant to Rule 4(e), Arizona Rules of Civil Procedure:

. . . upon approval of the court or presiding judge thereof. . . the applicant shall . . . be registered with the clerk as a private process server until such approval is withdrawn by the court in its discretion. The clerk shall maintain a register for this purpose. The private process server shall be entitled to serve in such capacity for any court of the state anywhere within the State.

- a. Provisional Certification. The presiding judge may grant provisional certification pending receipt of the information requested in the criminal history record check if the applicant provides a completed application, fingerprint card and successfully passes the examination, pursuant to this code section. Before granting provisional certification, the presiding judge may require additional background information reasonably necessary to determine if the applicant meets the qualifications specified in this code section. Provisional certification shall expire 120 days after it is granted unless the presiding judge extends the time period at the judge's discretion.
- b. Standard Certification. Upon receipt of the state and national criminal history records checks, pursuant to the A.R.S. §§41-1750 and -1758 and applicable federal laws, the presiding judge shall consider the information and grant or deny the standard certification. Before granting standard certification, the presiding judge may require additional background information reasonably necessary to determine if the applicant meets the qualifications specified in this code section.
- c. The presiding judge may transfer the certification of an individual to the county of residence or another county if appropriate.
5. Denial of Certification.
- a. The presiding judge may refuse to certify an applicant if one or more of the following is found:
- (1) Material misrepresentation or fraud in the application for or attempt to obtain certification;
  - (2) A record of any act constituting dishonesty or fraud on the part of the applicant in business or financial matters;
  - (3) A record of conduct showing the applicant is incompetent or a source of injury and loss to the public;
  - (4) A record of repeated complaints by the public or the court;

- (5) A record of conviction by final judgment of a misdemeanor or felony;
  - (6) A record of denial, revocation, suspension or any censure of any occupational license of the applicant by any federal, state or local government;
  - (7) The applicant has been found civilly liable by final judgment in an action involving fraud, misrepresentation, material omission, misappropriation, theft or conversion;
  - (8) The applicant is currently on probation or parole or named in an outstanding arrest warrant;
  - (9) The applicant has not submitted fingerprints pursuant to subsection E(2)(c)(4) and the presiding judge has not received and reviewed the criminal background analysis;  
or
  - (10) The applicant has violated any Arizona law, Arizona Rules of Court and this code section or court orders governing private process servers.
- b. An applicant's failure to disclose information on the application that is subsequently revealed through the fingerprint background check may constitute good cause for the presiding judge to automatically deny certification.
  - c. **Mandatory Denial.** The presiding judge shall refuse to certify the applicant if the applicant does not meet the qualifications or eligibility requirements.
  - d. The presiding judge shall promptly notify all applicants denied certification of the reasons for the denial, and the applicant's right to a hearing.
  - e. An applicant is entitled to a hearing, pursuant to this code section, on the decision to deny certification upon written request received within fifteen days after receipt of notice of the denial. The applicant is the moving party at the hearing and has the burden of proof.

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

- 1. **Code of Conduct.** Each certified process server shall adhere to the code of conduct incorporated in this code section and adopted by the supreme court.
- 2. **Conflict of Interest.** Pursuant to Rule 4(d), Arizona Rules of Civil Procedure, ". . . a private process server . . ." ". . . shall not be a party, an attorney, or the employee of an attorney in the action whose process is being served."
- 3. **Identification Cards.**
  - a. The identification card is the only official process server identification the court shall issue pursuant to subsection E(4) of this code section. A certified process server shall carry the identification card at all times when serving process and promptly display it when requested by an interested party. This is the only form of identification a certified

process server may use except government employee process servers who may use a government issued identification card in conjunction with the private process server identification card.

- b. Certified private process servers shall report lost or stolen cards to the issuing clerk of the superior court within three days of discovery of the loss. Upon filing an affidavit of loss with the clerk of the superior court and payment of any applicable fee, the clerk of the superior court shall issue a replacement card.
  - c. Upon suspension or revocation of certification, the certificate holder shall surrender the issued identification card to the clerk of the superior court within three days.
4. Change of Name or Address. All certificate holders shall notify the clerk of the superior court in the county of certification of any change in the legal name, business address, mailing address or home address or phone number of the certificate holder within 30 days of any change.
5. Assumed Name. A certificate holder shall not transact business in this state under an assumed name or under any designation, name or style, corporate or otherwise, other than the legal name of the individual.
6. Fees. The applicant shall pay all required fees for certification, examination and renewal of certification. The clerk of the superior court shall collect in advance these fees, which are non-refundable. Pursuant to A.R.S. §11-445(H), ". . . A private process server may charge such fees for services as may be agreed upon between the process server and the party engaging the process server."
7. Continuing Education. Certified private process servers shall complete ten hours of continuing education each twelve months and shall submit documentation of completion of this continuing education on a form approved by the director with the application for renewal of certification. Certified private process servers shall complete continuing education classes that are relevant to the work of a process server, pursuant to policies adopted by the director.
8. Employment Status of Private Process Servers.
  - a. Certified private process servers are not employees of the court and may not in any way represent themselves as such.
  - b. Private process servers may not, in any way represent themselves as "peace officers" unless they are peace officers pursuant to Arizona or federal law. Approval as a certified private process server does not, in itself, confer peace officer status on the holder.

## **G. Renewal of Certification.**

1. Expiration of Certification.
  - a. All certificates expire at midnight, every three years from date of issuance. All certifications shall continue in force until expired, suspended, revoked or terminated. A certificate shall expire as of the expiration date unless the certificate holder submits a renewal application and pays the accompanying fees by the expiration date. When a private process server has filed a completed application for renewal prior to the expiration of the existing certification, the existing certification does not expire until the presiding judge has approved or denied the application.
  - b. If the presiding judge denies the renewal application, the existing certification does not expire until the last day for seeking a hearing on the decision.
  - c. The presiding judge shall treat a renewal application filed after the expiration date as a new application.
  - d. The expiration provisions described in subsection G(1)(a) of this code section does not affect the authority of the presiding judge to take disciplinary action, including suspension or revocation of the certification of a certificate holder if a complaint or investigation is pending prior to the expiration date.
2. Voluntary Surrender. A certificate holder may voluntarily surrender a certificate, however, this surrender is not valid until accepted by the presiding judge. The presiding judge may require additional information which is reasonably necessary to determine if the certificate holder has violated this code section. The presiding judge shall, within 120 days of the voluntary surrender of the certification, either file a notice of hearing regarding a complaint and disciplinary action, or accept the surrender.
3. Application. A certified private process server whose certificate is in good standing may renew by filing a completed certification application for renewal, paying all fees, providing two color photographs (two inches by two inches) and submitting documentation of completion of the required hours of continuing education pursuant to subsection of this code section. The applicant shall file the application with the clerk of the court in the county of residence of the applicant.
4. Additional Information. Before granting renewal of certification, the presiding judge may require additional information reasonably necessary to determine if the applicant continues to meet the qualifications specified in this code section. This may include fingerprinting, reexamination and background information.

5. Decision Regarding Renewal.

- a. If the presiding judge is satisfied that the applicant continues to meet all qualifications for certification, as specified in subsection E(2) of this code section, the presiding judge shall renew the certification of the applicant. The presiding judge may refuse to renew the certification of an applicant for any of the reasons specified in subsection E(5) of this code section. The presiding judge shall promptly notify all applicants granted renewal of certification.
- b. The presiding judge shall promptly notify an applicant denied renewal of certification, of the reasons for the denial, and the applicant's right to a hearing.
- c. An applicant is entitled to a hearing, pursuant to this code section, on the decision to deny renewal of certification upon written request received within fifteen days after receipt of notice of the denial. The applicant is the moving party at the hearing and has the burden of proof.

**H. Complaints, Investigation, Hearings and Disciplinary Action.**

1. Complaint. The presiding judge may initiate or accept complaints concerning private process servers and initiate disciplinary action. The county where the basis for the complaint or discipline occurred shall handle all complaints filed against private process servers. All judicial officers and their designee shall, and any person may, notify the presiding judge if it appears a certificate holder has violated this code section. A complainant shall make the complaint in writing with sufficient specificity to warrant further investigation. The complaint shall include the name and telephone number of the complainant.
  - a. A certificate holder is subject to disciplinary action if the presiding judge finds one or more of the following applies to the certificate holder:
    - (1) Wilful violation of or wilful noncompliance with a court order, any court rule, Arizona law, or this code section;
    - (2) The existence of any cause for which original certification or any renewal of the certification could have warranted denial as described in subsection E(5) or G(5) of this code section;
    - (3) Failure to perform any duty to discharge any obligation required by this code section;
    - (4) Violation of any federal or state statute, administrative order, rule, code provision or policy regarding service of process or regulating the profession;
    - (5) Falsification or misrepresentation of any document potentially filed with the court;
    - (6) Engaging in the practice of law or otherwise providing legal advice while serving process;
    - (7) Advertising or otherwise representing services in a false, fraudulent or misleading manner;

- (8) Display of a uniform, title, insignia, badge, business card, identification card or other means of identification or making a statement that would lead a person to believe the certificate holder is an employee of the federal government, state government or any political subdivision of state government unless authorized by proper authorities to do so;
- (9) Use of letterhead, business cards, or advertising on any media in any manner to represent the certificate holder is an employee of the federal government, state government or any political subdivision of a state government unless authorized by proper authorities to do so;
- (10) Failure to display the identification card issued to persons who may have reasonable cause to verify the validity of the certification;
- (11) Failure to cooperate in an inquiry, investigation or disciplinary action by:
  - (a) Not furnishing papers or documents;
  - (b) Not furnishing in writing a full and complete explanation of a matter contained in a complaint when requested;
  - (c) Not responding to subpoenas issued, regardless of whether the recipient of the subpoena is accused in the proceeding;
- (12) Commission of any act involving moral turpitude, dishonesty or corruption whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action;
- (13) Unprofessional conduct, including the failure to exercise appropriate judgment regarding service of process; and
- (14) Wilful violation or wilful noncompliance of any other provision of the Code of Conduct.

2. Initial Screening. The presiding judge shall determine if a complaint warrants further investigation and evaluation. If the complaint is outside the jurisdiction of the Private Process Server Program, the presiding judge shall dismiss the complaint. The presiding judge may refer the complaint to another state agency or entity with jurisdiction, if appropriate.
3. Preliminary Investigation. If warranted, the presiding judge shall have a prompt, discreet and confidential investigation of the complaint made.
4. Request for Response from Certificate Holder. The presiding judge shall have the complaint sent to the certificate holder within a reasonable period of time after commencement of the investigation and shall require the certificate holder provide a written response. The presiding judge shall not proceed with disciplinary action under this code section without providing this notice and the opportunity to respond.
5. Review of Complaint and Investigation. Upon completion of an investigation, the presiding judge may:
  - a. Determine no violation exists and dismiss the complaint;

- b. Order further investigation;
  - c. Determine the complaint is appropriate for resolution without proceeding to formal disciplinary proceedings; or
  - d. Determine there is probable cause for belief in the existence of facts warranting formal disciplinary proceedings.
6. Emergency Suspension. If the presiding judge finds the public health, safety or welfare requires emergency action and incorporates a finding to that effect in the order, the presiding judge may order a summary suspension of the certification of a certificate holder pending proceedings for revocation or other action. The presiding judge shall institute these proceedings within 30 days of the issuance of the emergency suspension order. Upon order of the presiding judge, the clerk of the superior court shall immediately notify all judges of the superior court, other clerks of the superior court and the program coordinator of any summary suspension of a certificate holder.
7. Confidentiality. Information or documents obtained or generated by the presiding judge, clerk of the superior court, director, program coordinator or court employees during an open investigation or received in an initial report of misconduct are confidential except as mandated public record by the Arizona Supreme Court Rules. Upon determination a complaint requires formal disciplinary action and upon resolution of any complaint or investigation, records obtained during the investigation become open and are available for public inspection.
8. Formal Disciplinary Proceedings.
- a. Commencement. The presiding judge may commence formal proceedings if the judge finds reasonable cause to believe the certificate holder has committed misconduct under this code section and the complaint is not appropriate for resolution by informal discipline. The presiding judge may, upon commencement of formal proceedings, select a hearing officer or other appropriate designee, pursuant to subsection H(10) of this code section. For uniformity, consistency and ease of reading, the term "hearing officer" throughout this code section regarding disciplinary action refers to the presiding judge, or the hearing officer or other officer designated by the presiding judge.
  - b. Notice to Certificate Holder. The presiding judge shall have the formal statement of charges served on the certificate holder with a notice advising the certificate holder of the certificate holder's rights pursuant to this code section. This notice shall comply with the provisions of subsection H(12) of this code section.

9. Request for Hearing. All demands for hearing shall specify:
  - a. The section of this code section that entitles the person to a hearing;
  - b. The factual basis supporting the request for hearing; and
  - c. The relief demanded.
10. Appointment of Hearing Officer. The presiding judge may appoint a judge or a hearing officer to hold a hearing when required to do so pursuant to this code section, or upon written demand by a person entitled to a hearing, pursuant to this code section.
11. Time line for Hearing. The hearing officer shall ensure the hearing is held within 45 days of receipt of the request, if the request is made by a certificate holder, unless postponed by mutual consent for good cause. If the request is from the presiding judge, the hearing officer shall hold the hearing as soon as practical at the discretion of the hearing officer.
12. Notice of Hearing. The hearing officer shall prepare and give the parties notice of the hearing at least fifteen days prior to the date set for the hearing. The notice shall include the following information:
  - a. A statement of the time, place and nature of the hearing;
  - b. A statement of the legal authority and jurisdiction for conduct of the hearing;
  - c. A reference to the particular sections of the statutes, this code section and policies involved;
  - d. A short and plain statement of the allegations or factual basis supporting the relief requested. Amendments to the statement are permissible; and
  - e. If the hearing date has not previously been set, a statement indicating the certificate holder will be afforded a hearing upon request if the certificate holder makes the request in writing within ten days of receipt of the notice.
  - f. Personal service or service by certified mail, return receipt requested to the last business address of record with the clerk of the superior court, will accomplish service of the notice. For proof of service, a verified statement service was completed shall be filed with the hearing officer. Service by mail is complete upon deposit in the United States mail.
  - g. If a party is represented by an attorney, the attorney shall receive service.

13. Filings, Answers and Pleadings. A party shall file answers to notices within ten days after the date the notice is served, unless otherwise ordered by the hearing officer. Answers shall comply with Rule 8 of the Arizona Rules of Civil Procedure. If a party fails to file an answer within the time provided, the person is in default and the hearing officer may determine the proceeding against the party and admit one or more of the assertions contained in the notice. The hearing officer shall determine any defenses not raised in the answer are waived.
- a. Parties shall file all motions at least five days prior to the scheduled hearing date, unless otherwise ordered by the hearing officer.
  - b. Parties shall file responses to motions within five days of the filing of the motion.
  - c. The hearing officer and all parties to the proceeding shall receive copies of all filings.
  - d. All filings shall comply with Rule 5(h), Arizona Rules of Civil Procedure.
14. Discovery.
- a. No discovery is permitted, except as provided in this code section, unless mutually agreed to by the parties or permitted by the hearing officer.
  - b. The hearing officer, upon written request, shall order a party to allow the requesting party to have a reasonable opportunity to inspect and copy, at the requesting party's expense, admissible documentary evidence or documents reasonably calculated to lead to admissible evidence prior to a hearing, provided the evidence is not privileged.
  - c. The hearing officer, on the hearing officer's motion or upon request, may require, prior to hearing, the disclosure of documentary evidence intended for use at the hearing, provided the evidence is not privileged.
  - d. Parties may take depositions for use as evidence of witnesses who cannot be subpoenaed or are otherwise unable to attend the hearing. To take a deposition, a party shall file with the hearing officer a written motion, with copies to all parties, setting forth the name and address of the witness, subject matter of the deposition, documents, if any, the parties are seeking for production, time and place proposed for the deposition, and justification for the deposition.
  - e. Parties shall file responses to requests for depositions, including motions to quash, within five days after the filing of the request for deposition.
  - f. If a deposition is permitted, a subpoena and written order shall be issued. The subpoena and order shall identify the person to be deposed, scope of testimony to be taken,

documents, if any, to be produced, and time and place of the deposition. The party requesting the deposition shall arrange for service of the subpoena and order, with service on all parties five days before the time fixed for taking the deposition, unless, for good cause shown, the time is shortened by the hearing officer.

15. Subpoenas. For the purposes of investigations, hearings or other proceedings under this code section, the hearing officer may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual concerning the subject of any hearing or investigation. Subpoenas shall be issued, served and enforced in compliance with the Arizona Rules of Civil Procedure. An employee of the court or any other person as designated by the Arizona Rules of Civil Procedure may serve subpoenas.
16. Prehearing Conference. The hearing officer may order a prehearing conference at the request of any party or on the hearing officer's own initiative. The purpose of the conference is to consider any or all of the following actions:
  - a. To reduce or simplify the issues for adjudication;
  - b. To dispose of preliminary legal issues, including ruling on pre-hearing motions;
  - c. To stipulate to the admission of uncontested evidence, facts and legal conclusions;
  - d. To identify witnesses; and
  - e. To consider any other matters that will aid in the expeditious conduct of the hearing.
17. Procedure at Hearings.
  - a. The hearing officer shall preside over the hearing. The hearing officer shall have the authority to decide all motions, conduct prehearing conferences, determine the order of proof and manner of presentation of other evidence, issue subpoenas, place witnesses under oath, recess or adjourn the hearing and prescribe and enforce general rules of conduct and decorum. Informal disposition may be made of any case by stipulation, agreed settlement, consent order or default.
  - b. Rights of Parties. At a hearing:
    - (1) A party is entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding; and
    - (2) Any person may represent themselves or appear through counsel. An attorney who intends to appear on behalf of a party shall promptly notify the hearing officer

providing the name, address and telephone number of the party represented and the name, address and telephone number of the attorney.

(3) All persons appearing before the hearing officer in any proceeding shall conform to the conduct expect in the Arizona Superior Court.

a. Conduct of Hearing.

(1) The hearing officer may conduct the hearing in an informal manner and without adherence to the rules of pleading or evidence. The hearing officer shall require evidence supporting a decision is substantial, reliable and probative and shall exclude irrelevant, immaterial or unduly repetitious evidence. There is no right to a jury. All hearings are open to the public.

(2) The hearing officer shall require that all testimony considered is under oath or affirmation, except matters of which judicial notice is taken or entered by stipulation. The hearing officer may administer oaths and affirmations.

b. Record of Hearing.

(1) The hearing officer shall ensure the oral proceedings or any part of the oral proceedings are electronically recorded and transcribed on request of any party. The party making the request shall pay the cost of the transcript.

(2) A competent court reporter shall make a full stenographic record of the proceedings if requested by a party within five days prior to a hearing. The cost of the transcript is the responsibility of the requesting party. The hearing officer may require the prepayment or a monetary deposit to cover the cost of the transcript. If transcribed, the record is a part of the court's record of the hearing and any other party with a direct interest shall receive a copy of the stenographic record, at the request and expense of the party. If no request is made for a stenographic record, the hearing officer shall ensure the proceedings are recorded as described in subsection H(17)(d)(1) of this code section.

18. Rehearing. The hearing officer may grant a rehearing or reargument of the matters involved in the hearing upon written request of a party to a hearing filing the request with the hearing officer. The party shall make the request within fifteen days after any order made pursuant to a hearing was mailed or delivered to the person entitled to receive the order. The hearing officer shall decide to grant or deny the request within 30 days of the date of filing of the request. A party shall base the request for rehearing or review upon one or more of the grounds listed in Rule 59, Arizona Rules of Civil Procedure which materially affected the rights of a party and shall conform to the requirements of Rule 59. The hearing officer shall permit any party served with a request for rehearing to file a response within fifteen days of service.

19. Decisions and Orders. The hearing officer shall render the final decision within 30 days of the closing of the record of a hearing. The hearing officer shall render the final decision in writing and shall include findings of fact and conclusions of law, separately stated. If set forth in statutory language, a concise and explicit statement of the underlying facts shall accompany findings of fact. Parties shall receive notice of any decision or order either personally or by certified mail return receipt to the last known address.

20. Possible Actions.

- a. Upon completion of an investigation concerning alleged misconduct by a certificate holder, which may or may not include a hearing, the hearing officer shall do one or more of the following:
  - (1) Determine no violation exists and dismiss the complaint;
  - (2) Mandate additional training;
  - (3) Issue a letter of concern or warning;
  - (4) Place restrictions on a certificate;
  - (5) Suspend a certificate for a period not to exceed three years,
  - (6) Revoke a certificate; or
  - (7) Any other action the hearing officer determines appropriate, including return or refund of service fees to a harmed person or entity. This shall not include imposition of a fine.
- b. The hearing officer may resolve a violation by consent order or other negotiated settlement between the parties. This order or settlement may include any of the actions listed in subsection H(20)(a) of this code section.
- c. The hearing officer shall issue an order specifying in what manner and to what extent any failure or violation is found and any sanctions pursuant to this code section. Any disciplinary action shall have effect statewide. The clerk of the superior court shall, within ten days of any such action, notify in writing each clerk of the superior court and the program coordinator of the action taken and of any subsequent changes in the status of the individual's approval to serve process.

21. Procedure after Suspension or Revocation.

- a. Upon suspension or revocation of any certification the presiding judge shall have notice promptly served on the certificate holder either in person or by certified mail, return receipt requested, addressed to the last address of record with the program coordinator. Notice by mail is complete upon deposit in the United States mail.
- b. The presiding judge shall only issue certification to any person whose certification had previously been revoked under this code section after the expiration of one year from the

date of revocation, and after the person again qualifies in accordance with the applicable provisions of this code section.

22. Judicial Review. Decisions of the presiding judge, hearing officer or other designee regarding certification, renewal of certification or disciplinary action pursuant to this code section are final. Parties may seek judicial review through a petition for a special action pursuant to the Arizona Rules of Procedure for Special Actions.

**Section 7-204: Private Process Server**  
**Appendix A**  
**Code of Conduct**

**Preamble.** The Arizona Supreme Court adopts the following Code of Conduct to apply to all private process servers pursuant to A.R.S. §11-445(H), the Arizona Rules of Court and this code section. The purpose of this Code of Conduct is to establish minimum standards for performance by private process servers and to ensure they conduct the service of process in a professional manner.

**Standard 1. Rules and Applicable Laws.** The private process server shall perform all services and discharge all obligations in accordance with current Arizona and federal law, Arizona Rules of Civil Procedure, administrative orders and this code section as adopted by the Arizona Supreme Court governing the certification of private process servers.

- a. The private process server shall promptly file an affidavit of service or certificate of service or return the unserved documents.

**Standard 2. Skills and Knowledge.** The private process server shall demonstrate adequate skills and knowledge to perform the work of a private process server, and shall seek training opportunities to maintain professional competency and growth.

- a. The private process server has an obligation to have knowledge and keep informed of all current and applicable laws regarding the service of process.
- b. The private process server has a responsibility to maintain a working knowledge of proper methods of service.
- c. The private process server shall possess the necessary verbal and written communication skills sufficient to perform the private process server role.
- d. The private process server shall manage service proficiently. Skills required include those necessary to perform the service, maintain records and communicate with the client in a timely fashion.
- e. The private process server shall keep the client reasonably informed about the status of the service and promptly comply with reasonable requests.
- f. The process server shall ensure all affidavits and certificates prepared by the private process server are complete, accurate and understandable and are timely filed with the court.

**Standard 3. Professionalism.** The private process server shall exercise the highest degree of professionalism in all interactions with clients, the party located, and others they come in contact

with during the service. The private process server shall utilize professional judgment and discretion at all times.

- a. The private process server shall handle all legal documents with care and maintain required records in a professional manner.
- b. The private process server may act as a mentor to assist an inexperienced private process server for the purpose of increasing skill level and successful service of process.
- c. The private process server shall abstain from providing or offering to provide legal advice.
- d. The private process server shall not violate any rules adopted by the Arizona Supreme Court or conduct themselves in a manner that would reflect adversely on the judiciary, the courts, or other agencies involved in the administration of justice.
- e. The private process server shall respect the confidentiality of information and shall preserve the clients' confidences; this duty outlasts the employment of the private process server.
- f. The private process server shall maintain a professional appearance at all times.
- g. The private process server shall be courteous and polite in all dealings and shall abstain from using profanity or vulgarity in contact with others.
- h. The private process server shall never attempt to decide the merits of a lawsuit. The private process server shall never engage in any unnecessary discussions regarding the action being served, with the persons receiving service. It is only necessary for the private process server to explain the general nature of the served papers.
- i. The private process server shall know the protocol for service of process in a court building before proceeding with service and shall take appropriate steps to avoid impairing security or creating a security issue in a court building.

**Standard 4. Ethics.** The private process server shall perform services in a manner consistent with legal and ethical standards.

- a. The private process server, having located the sought-after party or persons receiving process for those persons intended for service, shall perform the service of process in a professional manner, utilizing sound judgment and avoid rudeness and unprofessional conduct.
- b. The private process server shall present service in a nonjudgmental manner.

- c. The private process server shall not misrepresent the private process server's qualifications, fees, or any other information relating to the role of the private process server.
- d. The private process server shall not utilize certification in any manner to gain access to information or services for purposes other than those of the Private Process Server Program.
- e. The private process server shall maintain the best interests of the client by maintaining a high standard of work and reporting to a client the full facts determined as a result of the work and effort expended whether they are advantageous or detrimental to the client.