

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ARIZONA CODE OF JUDICIAL)	Administrative Order
ADMINISTRATION ' 7-202:)	<u>No. 2003 - 123</u>
FIDUCIARIES)	(Affecting Administrative Order
<hr/>)	No. 2002-102)

The above captioned provision having come before the Arizona Judicial Council on October 15, 2003, and having been approved and recommended for adoption,

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the Arizona Code of Judicial Administration ' 7-202 is amended by deleting the current text and replacing it with the attached, effective January 1, 2004.

Dated this 17th day of December, 2003.

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- 202: Fiduciaries

A. Definitions.

Bond means a cash or surety instrument required pursuant to A.R.S ' 14-5411(A) and -3603(A) to ensure protection of the estate of a protected person or decedent and A.R.S ' 14-5651(A) and (D) to compensate the supreme court for costs incurred in conducting an investigation and hearing regarding misconduct by a fiduciary.

Conservator means Aa person who is appointed by a court to manage the estate of a protected person as provided in A.R.S ' 14-1201(8).

Department director means the individual appointed by the governor of Arizona, pursuant to A.R.S ' 41-604, to administer the Arizona Department of Veterans= Services.

Devise means Awhen 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 as provided in A.R.S ' 14-1201(12).

Devisee means Aa person designated in a will to receive a devise as provided in A.R.S ' 14-1201(13).

Fiduciary as provided in A.R.S ' 14-5651(J)(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 Aa 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 chartered under the laws of the United States or this state as provided in A.R.S ' 14-5651(J)(2).

AForeign personal representative means **A**a personal representative appointed by another jurisdiction as provided in A.R.S ' 14-1201(19).

AGuardian means **A**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(22).

AGuardian ad litem means **A**a person appointed by the court to protect the interest of a minor or an incompetent in a particular case before the court as provided in A.R.S ' 8-531(8).

APersonal representative means **A**a 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(38).

APrincipal means the individual of a business or public entity, designated on file with the program, who is a certified fiduciary with the controlling authority for the business or public entity; and who is responsible for supervising all other certified fiduciaries and staff working for the entity.

APublic 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.

AProtected person means **A**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).

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

AThe 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.

ATrainee means a person who would qualify for certification as a fiduciary but for the lack of required experience and who is seeking to gain the required experience to qualify as a certified fiduciary by working under the supervision of a certified fiduciary to perform authorized services, as set forth in 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.** This section applies to the appointment and certification of fiduciaries pursuant to A.R.S ' 14-5651(A) which provides: **Except as provided by subsection G of this section, the superior court shall not appoint a fiduciary unless that person is certified with the supreme court.** A.R.S ' 14-5651(G) provides: **The requirements of this section do not apply to a financial institution** For eligibility for court appointment as a guardian, conservator or personal representative, all persons, public and business entities shall hold valid certification and comply with the requirements of this section, unless exempt pursuant to this section. This section is read in conjunction with the ACJA ' 7-201: General Requirements. In the event of a conflict between this section and ' 7-201, the provisions of this section shall prevail.
- C. **Purpose.** This section is intended to result in the effective administration of the Fiduciary Program and in certification of fiduciaries and fiduciary entities for performance of responsibilities in a professional and competent manner, for the protection of the public in accordance with all applicable statutes and sections.

D. Administration.

3. **Role and Responsibilities of the Supreme Court.** A.R.S ' 14-5651(A) provides:

. . . The supreme court shall administer the certification program and shall adopt rules and establish and collect fees necessary for its implementation. . . . 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. Minimum qualifications.
 4. Biennial renewal of certification.
2. **Role and Responsibilities of the Director.** The role and responsibilities of the director are specified in ' 7-201.
3. **Role and Responsibilities of the Deputy Director.** The role and responsibilities of the deputy director are specified in ' 7-201. In addition, the deputy director shall make the final decision regarding an appeal of continuing education credit, pursuant to Appendix C.

4. Program Coordinator. The director shall designate a program coordinator. The program coordinator may delegate any duties and responsibilities to staff. In addition to the role and responsibilities specified in ' 7-201, the program coordinator shall:
 - a. Maintain a list of certified fiduciaries and distribute the list to the superior court and make it available to the public. The program coordinator may charge for the costs of providing copies of the certification list or any other public records of the program, except the program coordinator shall not charge a certified fiduciary, certified business entity, certified public fiduciary office or the Arizona Department of Veterans= Services for a copy of the list.
 - b. Provide the following training sessions:
 - (1) Until May 31, 2004, the program shall conduct one session of initial training for fiduciary applicants from and after January 1, 2004 thorough May 31, 2004 for fiduciary applicants and shall ensure the training totals a minimum of eighteen hours. This training shall consist of fifteen hours of instruction and three hours of examination. From and after June 1, 2004, the program shall not provide initial certification training, except for the session on the role and responsibilities of the certified professional fiduciary pursuant to subsection E(1)(a)(4).
 - (2) The program shall conduct sessions for certified fiduciaries seeking renewal of their certification through the renewal cycle ending on May 31, 2004. These sessions shall total ten hours of training pursuant to the requirements of subsection G(2). From and after June 1, 2004, the program shall not provide any sessions of renewal training for fiduciaries seeking renewal of certification except for those sessions offered in accordance with subsection E(1)(a)(4) and Appendix C (E)(1).
 - (3) From and after June 1, 2004, the program shall not provide any initial or renewal training to members of the public or individuals not seeking initial certification or renewal of certification.
 - c. Administer the examination required pursuant to this section and ' 7-201:
 - (1) In addition to the provisions listed in ' 7-201, in administering the examination the program coordinator shall:
 - (a) Offer the examination one time per year in conjunction with the initial training for certification until May 31, 2004; and
 - (b) Offer the examination a minimum of two times per calendar year, no less than once every two months, from and after June 1, 2004.
 - (2) The program coordinator may update tests as needed and may ask representatives from the court community, fiduciary community, the public, or any other knowledgeable resource to assist in the development and validation of tests created for use by this program.
 - (3) The program coordinator shall allow an applicant who fails an examination for certification to retake the examination one time under the following conditions:

- (a) The applicant is qualified to retake the examination; and
- (b) The applicant shall take the reexamination within 90 days of the date of the failed examination.
- (4) An applicant is disqualified from taking any future examination if it is determined the applicant engaged in fraud, dishonesty or corruption while taking the examination.
- (5) The program coordinator shall allow an applicant, upon written request, to review the examination papers and grades of the applicant under the following conditions:
 - (a) The applicant shall not copy materials provided for the review; and
 - (b) The applicant shall conduct the review during business hours in the presence of program staff.
- d. Lawful Agent. Pursuant to A.R.S. ' 14-5651(C)(6), the program coordinator shall serve A . . . as the lawful agent for the purpose of accepting service in any action, suit or proceeding that relates to the duties of a fiduciary.@
- 5. Fund. A.R.S. ' 8-135(A) establishes the Confidential Intermediary and Fiduciary Fund and specifies one of the purposes of the fund is for A . . . performing the duties related to fiduciaries pursuant to section 14-5651. The supreme court shall administer the fund subject to legislative appropriation.@ Further, A.R.S. ' 14-5651(A) provides: A . . . 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.@ A.R.S. ' 14-5651(I) provides: AThe supreme court may receive and expend monies from the confidential intermediary and fiduciary fund established pursuant to section 8-135 for the purposes of performing the duties related to fiduciaries pursuant to this section.@

E. Initial Certification.

- 1. Eligibility for Application. Any individual person, any business entity, the Arizona Department of Veterans= Services or the office of the public fiduciary, if eligible, pursuant to this section and ' 7-201, may apply for certification.
 - a. Eligibility for Certification as an Individual.
 - (1) A.R.S ' 14-5651 provides:
 - C. An applicant for certification shall:
 - 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 fiduciaries.

(2) In addition, the applicant shall possess one of the following:

- (a) 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 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 in one or a combination of the following circumstances:
 - (i) Under the supervision of a certified fiduciary;
 - (ii) Under the supervision of a bank trust or trust company officer; or
 - (iii) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;
- (b) 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 work experience specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship or personal representatives, 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:
 - (i) Under the supervision of a certified fiduciary;
 - (ii) Under the supervision of a bank trust or trust company officer; or
 - (iii) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;
- (c) 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 institutionally accredited but not approved by the American Bar Association, that 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 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:

- (i) Under the supervision of a certified fiduciary;
 - (ii) Under the supervision of a bank trust or trust company officer; or
 - (iii) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;
- (d) 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 certification as a fiduciary under this section. In addition, the applicant shall have a minimum of two 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 in one or a combination of the following circumstances:
- (i) Under the supervision of a certified fiduciary;
 - (ii) Under the supervision of a bank trust or trust company officer; or
 - (iii) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health or disability law;
- (e) 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 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:
- (i) Under the supervision of a certified fiduciary;
 - (ii) Under the supervision of a bank trust or trust company officer; or
 - (iii) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health or disability law;
- (f) A degree from a law school accredited by the American Bar Association and admitted to the practice of law and in good standing in the state where the applicant was admitted;
- (g) A degree from a law school institutionally accredited but not approved by the American Bar Association and admitted to the practice of law and in good standing in the state where the applicant was admitted, or;
- (h) 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.

- (3) The applicant shall personally take and pass to the director's satisfaction, a written examination given by the program, reasonably testing the applicant's knowledge as a fiduciary. Until May 31, 2004, the applicant shall successfully complete the initial training provided by the program in order to sit for the examination. From and after June 1, 2004, admission to sit for the examination is based upon the criteria in subsections E(2)(a-h) and not based upon successful completion of a session of initial training as provided by the program.
 - (4) From and after June 1, 2004, on successfully passing the examination, the applicant shall attend and complete a session on the role and responsibilities of the certified professional fiduciary as provided by the program.
 - (5) The applicant shall have one year from the date of passing the examination or reexamination to complete the certification process. The program coordinator shall treat an applicant who does not complete the process within one year as a new applicant and require the applicant, through May 31, 2004, to retake the training, examination and pay all initial certification and training fees. From and after June 1, 2004, the applicant shall have one year from the date of passing the examination or reexamination to complete the certification process. From and after June 1, 2004, the program coordinator shall treat an applicant who does not complete the process within one year as a new applicant and require the applicant to retake the examination, attend the session on the role and responsibilities of the certified fiduciary and pay all initial certification and examination fees.
 - (6) The program may conduct a credit review and review of public records of any applicant for initial certification.
- b. Eligibility for Certification as a Business Entity. For qualification or eligibility for business entity certification, the corporation, limited liability company or partnership shall meet the following conditions prior to certification:
- (1) Each business entity shall designate one or more principals who are certified as an individual fiduciary. The principal shall supervise all other certified fiduciaries and staff working for the corporation, limited liability company, or partnership who work with wards, protected persons or decedent estates. The principal shall adopt policies and procedures giving reasonable assurance all certified fiduciaries conform to the applicable rules, statutes and code sections and non-certified staff conduct themselves in accordance with the applicable rules, statutes and code sections. If any designated principal is no longer able or willing to serve as the principal, the certified business entity shall supply the program coordinator with

the name of the new designated principal within fourteen days. Short term vacations or illnesses are not examples of inability to serve. The business entity shall file the executed principal form with the program naming the new principal within 30 days after the designated principal has provided notice to the business entity the designated principal is no longer willing or able to serve. The certified business entity shall ensure the new designated principal is certified as an individual fiduciary. The designated principal may represent the business entity in any proceeding under this section or ' 7-201.

- (2) The principal shall file a list of all certified fiduciaries acting for or on behalf of the business entity with the initial application.
 - (3) The principal shall file articles of incorporation and letters of good standing from the Arizona Corporation Commission or the Secretary of State with the initial application.
 - (4) The principal shall agree that not fewer than one certified fiduciary shall assume the primary responsibility for each court appointment as a guardian, conservator or personal representative.
 - (5) The principal shall file with the program, by June 30 each year, a list of all certified fiduciaries acting for or on behalf of the business entity.
- c. Eligibility for Certification of the Arizona Department of Veterans=Services. For qualification for certification for eligibility for appointment as a fiduciary the department shall meet the following conditions prior to certification:
- (1) The department director shall designate a certified fiduciary who shall act as the principal. The designated principal shall supervise all other certified fiduciaries and staff working for the department in furtherance of its duties pursuant to A.R.S. ' ' 41-603(A) and -605. The principal shall adopt policies and procedures giving reasonable assurance all certified fiduciaries conform to the applicable rules, statutes and code sections and non-certified staff conduct themselves in accordance with the applicable rules, statutes and code sections. If the designated principal is no longer able or willing to serve as the principal, the department shall supply the program with the name of the new designated principal within fourteen days. Short term vacations or illnesses are not examples of inability to serve. The department shall file the executed principal form with the program naming the new principal within 30 days after the designated principal has provided notice to the department the principal is no longer able or willing to serve. The department director or designated principal may represent the department in any proceeding under this section or ' 7-201.
 - (2) The designated principal shall file a list of all certified fiduciaries acting for or on behalf of the business entity with the initial application.
 - (3) The designated principal shall agree that not fewer than one certified fiduciary shall have the primary responsibility for each court appointment as a guardian, conservator or personal representative.
 - (4) The designated principal shall file with the program, by June 30 each year, a list of all certified fiduciaries acting for or on behalf of the department.

d. Eligibility for Certification of the Office of the Public Fiduciary. For qualification for certification for eligibility for appointment as a fiduciary the office shall meet the following conditions prior to certification:

- (2) The public fiduciary shall obtain certification as an individual fiduciary and shall act as the principal. The public fiduciary may designate a department employee who is a certified fiduciary as principal for a time not to exceed 120 days. If the time period exceeds 120 days and upon a showing of good cause, the county board of supervisors shall appoint a certified fiduciary to act as interim principal. The public fiduciary or designated principal shall supervise all other certified fiduciaries and staff working for the public fiduciary in furtherance of its duties pursuant to A.R.S. ' 14-5602, -5603, -5604, -5605 and -5606. The principal shall adopt policies and procedures giving reasonable assurance all certified fiduciaries conform to the applicable rules, statutes and code sections and non-certified staff conduct themselves in accordance with the applicable rules, statutes and code sections. If the designated principal is no longer able or willing to serve as the principal, the public fiduciary office shall supply the program with the name of the new designated principal within fourteen days. The public fiduciary office shall file the executed principal form with the program 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 public fiduciary or the designated principal may represent the public fiduciary office in any proceeding under this section or ' 7-201.
- (3) The public fiduciary shall file a list of all certified fiduciaries acting for or on behalf of the public fiduciary with the initial application.
- (4) The public fiduciary shall agree that not fewer than one certified fiduciary shall have the assigned primary responsibility for each court appointment as a guardian, conservator or personal representative.
- (5) The public fiduciary shall file with the program, by June 30 each year, a list of all certified fiduciaries acting for or on behalf of the office of the public fiduciary.

2. Application for Initial Certification.

- a. Procedures. The procedures for application for initial certification are specified in ' 7-201. In addition, an applicant for individual certification shall provide one color passport-size photograph, two inches by two inches. The program may conduct a credit review of an applicant.
- b. Fees. A.R.S. ' 14-5651(A) provides: A . . . The supreme court shall administer the certification program and shall adopt rules and establish and collect fees necessary for its implementation.@ An applicant shall pay the fees established in the fee schedule adopted by the supreme court. The program coordinator shall collect these fees in advance. The fees are not refundable. The

program coordinator shall forward the fees to the state treasurer for deposit in the Confidential Intermediary and Fiduciary Fund, pursuant to A.R.S. ' 8-135.

c. 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 section 41-1750 and public law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

Also reference ' 7-201.

d. Bond. A.R.S. ' 14-5651(A) provides: AAt 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.@

(1) A bond is required of each applicant, business entity and each employee of a business entity assigned primary responsibility for court appointments seeking certification.

(2) 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 certification 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.

(3) This bond is separate from the requirements of A.R.S. ' ' 14-5411(A) and -3603(A). A.R.S. ' 14-5411(A) provides: AExcept 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 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 state superintendent of banks 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.
- (4) For initial certification 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(2)(d). Upon certification the certificate holder shall maintain the cash or surety bond as long as the certification is in place. Upon expiration or surrender of the certification, the certificate holder may apply in writing to the program for return of any cash bond not forfeited. The program shall return any cash bond not forfeited within 120 days.
- (5) A bond may be either a surety or cash bond as follows:
- (a) A surety bond in favor of the state of Arizona and the supreme court. The applicant shall have the bond executed on a bond form approved by the program 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 dollars 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.
 - (b) A cash bond in the amount of 10,000 dollars for deposit with the state treasurer in a special non-interest bearing account.
 - (c) If the applicant is found by the director to have violated any section adopted pursuant to A.R.S. ' 14-5651, the director may cause the forfeiture of the cash or surety bond, as applicable, to the supreme court. If the bond is forfeited, the director shall deposit the funds in the Confidential Intermediary and Fiduciary Fund established pursuant to A.R.S. ' 8-135.

- (6) 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.
3. Exemptions from Certification.
- a. The program coordinator shall not require certification 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: AThe 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: A . . . 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 or guardian or personal representative may apply on the form prescribed by the supreme court for an emergency exemption from certification 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 superior court in the county where the appointment is requested. 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 persons;
 - (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 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 certified 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 certification during this temporary appointment;
 - (b) The appointee shall apply for fiduciary certification 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 certification, the presiding judge or designated judicial officer shall forward to the program a copy of the application for exemption, the petition and order granting the emergency appointment of guardian or conservator and the minute entry.

4. Decision Regarding Certification. In addition to the reasons specified in ' 7-201, the program coordinator may refuse to certify an applicant 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 and shall refuse to certify the applicant if the applicant or an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony.

F. Role and Responsibilities of Certificate Holders. Certified fiduciaries shall have the following specified roles and responsibilities.

1. Code of Conduct. Each certified fiduciary shall adhere to the code of conduct incorporated in this section and adopted by the supreme court, pursuant to this section and A.R.S. ' 14-5651(A)(1). Violations of the code of conduct may serve as evidence of a violation of ' 7-201 and this section.

2. Assumed Business Name. The provisions regarding assumed business name are specified in ' 7-201.
3. Change of Address or Name. The provisions regarding change of address or name are specified in ' 7-201.
4. Status of the Fiduciary. The certificate issued by the program staff to the fiduciary shall designate the status of the fiduciary as associated with a public fiduciary, the Arizona Department of Veterans= Services, a business, or as acting independently.
 - a. The principal of a business entity, the office of the public fiduciary, or the Arizona Department of Veterans= Services shall annually file with the program, by June 30 of each year, a list of all certified fiduciaries acting for or on behalf of the business entity, public fiduciary or the Arizona Department of Veterans= Services.
 - b. If the status of a fiduciary changes from being associated with a business entity, a public fiduciary office or the Arizona Department of Veterans= Services, the fiduciary shall, within 30 days of the change, notify the program and if appropriate, meet all requirements for certification as an individual, including posting of the bond.
 - c. A business entity, public fiduciary office or the Arizona Department of Veterans= Services, as applicable, shall notify the program, within 30 days, when an employee who is a certified fiduciary leaves the employment of the business entity, public fiduciary office or the Arizona Department of Veterans= Services.
5. Certificate Number. A fiduciary, when filing a document with the superior court, shall include the fiduciary=s personal certificate number on the document and when appropriate, the business entity=s number.
6. A fiduciary shall report any bankruptcies, tax liens, final foreclosure civil judgments, court removals or sanctions, or felony convictions to the program coordinator, in writing within 30 days and provide a copy of all pertinent documents.
7. Supervision of Trainees. A certified fiduciary may supervise a trainee under the following conditions:
 - a. The supervising fiduciary shall maintain the primary responsibility for the client or estate and shall not delegate these duties to any trainee.
 - b. The supervising fiduciary shall:

- (1) Assume primary responsibility for the trainee's guidance in any work undertaken and for supervising, generally and directly, as necessary, the quality of the trainee's work;
 - (2) Assist the trainee in activities to the extent the fiduciary considers it necessary;
 - (3) Ensure the trainee is familiar with and adheres to the provisions of this section and ' 7-201; and
 - (4) Provide the supervising fiduciary's name and certificate number, as required by subsection (F)(5), on any documents filed in a court or tribunal prepared by the trainee under the fiduciary's supervision.
- c. The trainee may perform authorized services, as set forth in statute, court orders, this section and ' 7-201, only under the supervision of the certified fiduciary. Neither the trainee nor the supervising fiduciary may represent the trainee is a certified fiduciary.
8. Reporting of Possible Violations. A fiduciary shall notify the program if the fiduciary has knowledge another certified fiduciary has committed misconduct raising a substantial question as to the fiduciary's honesty, trustworthiness or qualifications as a certified fiduciary. This fiduciary shall make this notification in compliance with ' 7-201.

G. Renewal of Certification. The general requirements for renewal of certification are specified in ' 7-201. In addition, the following requirements apply:

1. Expiration date. All certifications expire at midnight, on May 31st each even numbered year.
2. Renewal Training. During each renewal cycle all certified fiduciaries shall attend twenty hours of continuing training. Until May 31st, 2004, ten of the twenty hours shall consist of training provided by the program. From and after June 1, 2004, the program shall not provide this renewal training, except for those sessions offered in accordance with Appendix C(E)(1). The twenty hours shall consist of training specifically relevant to guardianships, conservatorships, personal representatives, or trusts. From and after June 1, 2004, the twenty hours shall include a minimum of three hours of ethics. The certified fiduciary shall maintain documentation, on an approved form, of completion of the twenty hours of training.
3. All applicants shall pay the applicable fees described in the fee schedule adopted by the supreme court.
4. The program may conduct a personal credit review and review public records regarding an applicant for renewal of certification.
5. 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 certification.

6. Decision Regarding Renewal. In addition to the reasons specified in ' 7-201, the program coordinator may refuse to renew the certification of an applicant 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 sanctioned by the court regarding the administration of a guardianship, conservatorship, or personal representative. The program coordinator shall refuse to renew the certification of the applicant if the applicant or an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony.
7. Notification of Decisions Regarding Renewal. The provisions regarding notification of decisions regarding renewal are specified in ' 7-201.

H. Complaints, Investigation, Disciplinary Action and Hearings. Reference ' 7-201.

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 misconduct by a certificate holder, which may or may not involve a hearing, the director may, in addition to any other actions specified in ' 7-201:
 - a. Require the certificate holder forfeit the surety or cash bond; and
 - b. Determine and impose a civil penalty, pursuant to A.R.S. ' 14-5651(D). The civil penalty may not exceed 500 dollars for each failure or violation and may not exceed an aggregate civil penalty of 15,000 dollars. The certified fiduciary shall pay the civil penalty to the director for remission to the state treasurer for deposit in the general fund.
3. Judicial Review. Reference ' 7-201. In addition, A.R.S. ' 14-5651(H) provides: ¶This section does not grant any fiduciary or any applicant for a certificate as a fiduciary the right to a direct appeal to the supreme court.®

Section 7-202: Fiduciaries
Appendix A
Code of Conduct

Preamble. This code of conduct is adopted by the supreme court to apply to all certified fiduciaries pursuant to A.R.S. ' 14-5651(A)(1) in the state of Arizona. The purpose of this code is to establish minimum standards of performance for certified fiduciaries.

Standard 1. 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 their limitations, 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 also 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. Regardless, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, or protected person, or estate.
- f. The fiduciary shall refrain from decision making in areas outside the scope of the guardianship, or conservatorship, or personal representative order. When necessary and in the best interests of the ward or protected person, the fiduciary shall assist the ward or protected person by ensuring decisions are made in an autonomous fashion.

Standard 2. Ethics. 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 avoid self-dealing or the appearance of a conflict of interest. Self-dealing or a conflict of interest 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. In situations where no other services are available, the fiduciary shall disclose the potential conflict in a petition to the superior court, seeking approval prior to the provision of services.
- 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.
- e. The fiduciary shall ensure any document filed with the superior court is timely.
- f. The fiduciary shall not knowingly file any document with the superior court or present testimony to the superior court which is misleading, inaccurate, false, or contains misstatements, misrepresentations or omissions of material facts.

Standard 3. 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 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 take steps to become informed of the statutory requirements for a guardian.
- b. The fiduciary shall keep informed and 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. 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 available 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. The fiduciary, when it is not possible to determine the preferences of the ward or they will result in substantial harm, shall make decisions with respect to care, treatment and services, in conformity with the best interests of the ward.
- k. The fiduciary, in the event the only available treatment, care or services are not the most appropriate and least restrictive, 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 to assist in ensuring 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 shall approve pursuant to state law.
- o. The fiduciary shall keep abreast of the laws of the state regarding the withholding or withdrawal of life-sustaining treatment.
- p. The fiduciary shall 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.
- q. The fiduciary shall ensure the ward is receiving 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.

Standard 4. 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 intelligence, prudence and diligence and avoid any self-interest in the discharge of this duty.

- a. On appointment, the fiduciary shall take steps to become informed of the statutory requirements for managing a protected person's estate.
- b. 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.
- c. The fiduciary shall not co-mingle any property or assets of the protected person's estate with property or assets of other estates the fiduciary may hold as conservator, nor co-mingle with the fiduciary's own property or assets.
- d. 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.
- e. The fiduciary shall exercise prudence in the investment of surplus funds of the estate.

- f. The fiduciary shall petition for and receive authority from the superior court, prior to expending estate funds for gifting.
- g. 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.
- h. The fiduciary shall ensure the protected person is receiving all medical and financial benefits to which the protected person may be entitled.
- i. The fiduciary shall ensure all fees and expenses incurred for the protected person by the fiduciary, including compensation for the services of the fiduciary are reasonable in amount and necessarily incurred for the welfare of the protected person.
- j. The fiduciary shall prepare complete, accurate and understandable accountings.
- k. The fiduciary shall protect the rights and make decisions in the best interest of the protected person when acting in a *de facto* guardianship.

Standard 5. 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 take steps to become 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, nor 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 of accounting 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 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, accountings and closing statements.

Standard 6. Termination. The fiduciary has an affirmative obligation to seek termination or limitation of the guardianship or conservatorship wherever 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.

Standard 7. Compliance. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law and the administrative rules, court orders, administrative orders, ' 7-201 and this section adopted by the supreme court governing the certification of fiduciaries.

The AOC acknowledges Michael D. Casasanto for granting permission to pattern the code of conduct after *A Model Code of Ethics for Guardians* **8**.

**Section 7-202: Fiduciaries
Appendix B
Fee Schedule**

Fees Effective until May 31, 2004:

A. Individual Certification.

- | | |
|--|-----------|
| 1. Initial training session
(Includes one copy of the training manual) | \$ 100.00 |
| 2. Initial individual certification: | |
| a. Certification expiring more than one year after application date | \$ 150.00 |
| b. Certification expiring less than one year after application date | \$ 75.00 |
| 3. Fingerprint application processing fee
(Rate set by Arizona law and subject to change) | |
| 4. Individual renewal certification: | |
| a. Biennial training session
(Includes one copy of the training materials) | \$ 75.00 |
| b. Biennial certification renewal | \$ 75.00 |

B. Business Entity Certification.

- | | |
|---|----------|
| 1. Initial business certification: | |
| a. Certification expiring more than one year after application date | \$ 75.00 |
| b. Certification expiring less than one year after application date | \$ 38.00 |
| 2. Renewal certification: | |
| a. Biennial business entity renewal | \$ 75.00 |

Fees Effective from and after June 1, 2004:

A. Individual Certification.

1. All initial individual (public or private) certification:
 - a. Certification expiring more than one year after application date \$ 150.00
 - b. Certification expiring less than one year after application date \$ 100.00
2. Fingerprint application processing fee
(Rate set by Arizona law and subject to change)
3. All individual renewal certification:
 - a. Biennial certification renewal \$ 100.00

B. Business Certification.

1. All initial business (public or private) entity certification:
 - a. Certification expiring more than one year after application date \$ 150.00
 - b. Certification expiring less than one year after application date \$ 100.00
2. All business renewal (public or private) certification:
 - a. Biennial business entity renewal \$ 150.00

C. Miscellaneous Fees.

1. Any late application fee \$ 50.00
2. Examination fee \$ 100.00
3. No show for examination or training fee \$25.00
4. Reactivation of certification fee \$ 25.00

- | | |
|--|----------|
| 5. Replacement of certificate or name change | \$ 25.00 |
| 6. Delinquent continuing education fee | \$ 25.00 |

SECTION 7-202: FIDUCIARIES
APPENDIX C
CONTINUING EDUCATION POLICIES

A. Purpose.

1. Court appointed fiduciaries have important responsibilities in serving vulnerable and elderly clients. Fiduciaries are required to demonstrate a basic level of competency to become certified and practice in Arizona. Ongoing, continuing education is one means to ensure a certified fiduciary maintains continuing competence in the fiduciary field after certification is obtained. It also provides opportunities for fiduciaries to keep abreast of changes in the fiduciary and legal professions and the Arizona judicial system.
2. Pursuant to A.R.S. ' 14-5651 (C) (5) and subsection G (2), fiduciaries shall complete twenty hours of continuing education every two years. Of these twenty hours, ten hours shall consist of training provided by the program. The remaining ten hours shall consist of training specifically relevant to guardianships, conservatorships or personal representatives provided by organizations and entities outside the program. These policies are intended to provide direction to certified fiduciaries, to ensure compliance with statutes, this section and ' 7-201 regarding continuing education credits; and to provide for equitable application and enforcement of the continuing education requirements. From and after June 1, 2004, these policies shall remain in effect when fiduciaries shall receive all required twenty hours of continuing education credits from organizations and entities outside of the program.
3. During each renewal cycle all fiduciaries shall attend twenty hours of continuing education training. From and after June 1, 2004, the program shall no longer provide sessions of renewal training, except as provided in subsection E (1) of this Appendix.

B. Applicability.

1. Pursuant to AR.S ' 14-5651 and subsection G (2): fiduciaries; all certified fiduciaries shall complete at least twenty hours of approved continuing education every two years. The fiduciary shall submit an affidavit of the continuing education with the application for renewal of certification. Pursuant to subsection G (1), all certificates expire on May 31st each even numbered year.
2. Effective date. From and after January 1, 2004 and for every renewal of certification after that date, all certified fiduciaries shall comply with these adopted policies regarding continuing education.

C. Responsibilities of Certified Fiduciaries.

1. It is the responsibility of each certified fiduciary to ensure compliance with the continuing education requirements. These responsibilities include maintaining documentation of completion of continuing education and submitting this documentation with the renewal application by the deadline date established by the program coordinator for renewal of certification.
2. Upon request, each certified fiduciary shall provide any additional information required by the program coordinator when reviewing the application for renewal of certification and continuing education applications and documentation.

D. Authorized Continuing Education Activities.

1. Continuing education activity shall address the areas of proficiency, competency and performance of a fiduciary and impart knowledge and understanding of the fiduciary profession, the Arizona judiciary, or the legal process. Continuing education shall increase the participant's understanding of the responsibilities of a fiduciary and the fiduciary's impact on the judicial process and the public. A fiduciary shall complete a minimum of three hours of ethics training during each renewal cycle as part of the total required hours. Continuing education activity shall include one or more of the following subjects:
 - a. Guardianships;
 - b. Conservator ships;
 - c. Personal representatives;
 - d. Trust administration;
 - e. Power of attorney;
 - f. Mental health;
 - g. Ethics for fiduciaries, including cooperation with lawyers, judges and fellow fiduciaries, professional attire, courtesy and impartiality to all litigants, information vs. legal advice and public relations;
 - h. The Arizona court system including the state and federal constitution, branches of government, Arizona court jurisdiction and responsibilities and the Arizona tribal court system;

- i. The Arizona Revised Statutes, Arizona Rules of Court, this section, ' 7-201, case law and administrative orders; and current issues in the Arizona court system relevant to the fiduciary profession;
 - j. The role and responsibilities of the certified fiduciary including, but not limited to, this section and ' 7-201; and
 - k. Management issues including office practices, public relations and customer service; accounting, time management, human resources, financial planning and stress management.
- E. Accredited Activities. Subject to the conditions specified in this policy, programs, seminars and courses of study offered or approved by the following entities are considered accredited by the program:
- 1. Fiduciary Certification Program (FCP);
 - 2. The National Guardianship Association (NGA.);
 - 3. Arizona Fiduciaries Association (AFA.);
 - 4. National Association of Court Management (NACM);
 - 5. State Bar of Arizona, Probate Law and Trust Section;
 - 6. State Bar of Arizona, Mental Health and Elder Law Section;
 - 7. National Academy of Elder Law Attorneys (NAELA);
 - 8. National Association of Geriatric Care Managers (NAGCM);
 - 9. National College of Probate Judges; and
 - 10. National Association of Social Workers (NASW).

- F. **Fiduciary Serving as Faculty.** A fiduciary may receive continuing education credit for serving as an instructor, speaker, faculty or panel member of a continuing education seminar directly related to the fiduciary profession. The fiduciary may receive credit for the actual presentation time, plus actual preparation time up to two hours for each hour of presentation time. A fiduciary may receive a maximum of ten hours of continuing education credit for serving as faculty in any renewal period; however, a fiduciary may not receive credit for presenting a program repeatedly throughout the renewal period. A fiduciary may receive continuing education credit for actual presentation time for duplicate programs presented in subsequent renewal periods; however, shall not receive continuing education credit for preparation time for those programs.
- G. **Authoring or Coauthoring Articles.** A fiduciary may receive continuing education credit for authoring or coauthoring an article directly related to the fiduciary profession and published in a state or nationally recognized professional journal relevant to the fiduciary profession or law, if the article is a minimum of 1,000 words in length. A fiduciary may earn a maximum of one hour of continuing education credit for authoring an article or articles in any one renewal period. A fiduciary shall not receive credit for the same article published in more than one publication or republished in the same publication in later editions.
- H. **University, College and Other Educational Institution Courses.** A fiduciary may receive continuing education credit for completing a course provided by a university, college or other educational institution with a grade of "C" or better or a "pass" on a pass/fail system. Credit is awarded by multiplying the number of credit hours awarded by the educational institution by two. However, the maximum total of continuing education credits for completion of courses awarded pursuant to this subsection shall not exceed 50 percent of the total number of continuing education hours required for the renewal period, or ten hours.
- I. **Self Study.** A fiduciary may receive continuing education credit for self study, including correspondence courses, procedure manuals, video and audio tapes, on-line computer seminars and other methods of independent learning. The self study shall have accompanying written materials. A fiduciary shall not receive credit for simply reading books, or seminar or other printed materials. A fiduciary may receive a maximum of five continuing education credits for self study in any one renewal period. A fiduciary shall not use self study as the qualifying method for the three hours of ethics credit during the renewal cycle. A fiduciary shall document the continuing education credit for self study on a form approved and provided by the program.
- J. Mentoring Activities.** A fiduciary shall not receive credit for mentoring activities.
- K. **Minimum Time.** Each continuing education activity shall consist of at least 30 minutes of actual clock time spent by a registrant in actual attendance at and completion of an approved continuing education activity. Actual clock time is the total hours attended, minus the time spent for introductory remarks, breaks, meals and business meetings. After completion of the initial 30 minutes of continuing education

activity, a fiduciary may receive credit in fifteen minute increments. A fiduciary shall not use additional earned continuing education credits for subsequent renewal periods.

- L. Conferences. A fiduciary may receive continuing education credit for attendance at a conference relevant to the fiduciary profession. Conference attendance may satisfy 100 per cent of the continuing education credits required during the renewal cycle, if the conference is sponsored by organizations or entities listed in subsection E of this Appendix. The fiduciary shall obtain documentation of the specific sessions of the conference attended.

- M. Proration of Continuing Education. A fiduciary initially certified on or after May 1st of the second year of the renewal cycle shall complete a total of ten hours of continuing education credit for that first certification period, including at least one hour of ethics. In subsequent certification periods, the fiduciary shall meet the twenty hour requirement. This proration of continuing education credits does not apply to a fiduciary who previously held certification, allowed the certification to lapse and subsequently applied for and was granted certification partway through the renewal period. In that case, the fiduciary is subject to the full twenty hour continuing education requirement.

- N. Repeat of an Activity. Generally, a fiduciary may not receive credit for repeating an activity within the same renewal period. Exceptions are permissible if the activity is directly related to the fiduciary profession and duplication of the continuing education activity will enhance the fiduciary's knowledge, skill and competency.

- O. Documentation of Attendance or Completion. When attending or completing a continuing education activity, each fiduciary shall obtain documentation of attendance or completion from the sponsoring entity.
 - 1. At a minimum, this documentation shall include the:
 - a. Name of the sponsor;
 - b. Name of the participant;
 - c. Topic of the subject matter;
 - d. Number of hours actually attended or the number of credit hours awarded by the sponsoring entity;
 - e. Date and place of the program;

- f. Signature of the sponsor, or documentation representing an official document of the sponsoring entity; for example, a college grade report, etc.; and
- g. Signature of the fiduciary, either in the space specifically provided on the form for this purpose, or the fiduciary may sign across the documentation (for example, the college grade report) to indicate attendance and completion of the activity.

P. Attendance. A fiduciary shall not request and shall not receive credit if the fiduciary attends part, but not all of the provided activity.

Q. Non-Qualifying Activities.

1. The following activities shall not qualify for continuing education credit for certified fiduciaries:
 - a. Programs completed for qualification for initial certification;
 - b. Programs with a primary focus on teaching nonverbal skills that are not directly related to the fiduciary profession;
 - c. Attendance or participation at professional or association business meetings, general sessions, elections, policymaking sessions or program orientation;
 - d. Serving on committees or councils or as officers in a professional organization;
 - e. Activities completed as required by the director as part of disciplinary action; and
 - f. Any activity completed as ordered by a judicial officer.

R. Compliance and Non-Compliance.

1. Affidavit of Compliance. The fiduciary shall file with the application for renewal of certification a completed affidavit of compliance, demonstrating full compliance with the continuing education requirements. The affidavit shall be on a form provided by the program and shall list the continuing education attended, hours of credit for each session and total hours of credit. The program coordinator shall review continuing education credits at the time of submission of the renewal application and shall:
 - a. Accept the continuing education credit as submitted;
 - b. Accept part, but not all of the continuing education credit;

- c. Require additional information from the fiduciary before making a decision; or
 - d. Deny the continuing education credit.
2. Random Audits of Compliance. Each year the program coordinator may randomly select a designated number of certified fiduciaries to audit for compliance with the continuing education credits. On request, the selected fiduciaries shall submit proof of completion of their continuing education credits.
 3. Decision. If the program coordinator accepts part, but not all of the continuing education credit, denies the credit, or requires additional information from the fiduciary, the coordinator shall send the decision or request for additional information to the fiduciary, in writing, within fifteen days of the program coordinator's decision. If the fiduciary fails to provide the requested information, the program coordinator may deny the continuing education credit.
 4. A fiduciary who fails to meet the continuing education requirement pursuant to subsection G(2), falsifies continuing education documents, or willfully misrepresents continuing education activities and attendance at continuing education activities is subject to any or all of the following actions:
 - a. Payment of a delinquent continuing education compliance fee of \$25.00 prior to renewal being granted;
 - b. Denial of renewal of certification; or
 - b. Disciplinary action.
 5. Extension or Waiver of Continuing Education Requirements. A fiduciary seeking renewal of certification who has not fully complied with the continuing education requirements may request an extension or waiver of the continuing education requirements under specified conditions.
 - a. To request an extension or waiver the fiduciary shall:
 - (1) Submit a notarized statement to the program, explaining the facts regarding non-compliance and requesting an extension or waiver of the continuing education requirements;
 - (2) Submit this notarized statement no later than 30 days preceding the expiration of the fiduciary's certificate; and
 - (3) Provide documentation in support of the request and any additional information requested by the program coordinator.
 - b. Upon a showing of extenuating circumstances or good cause, the program coordinator may grant an extension of a maximum of 90 days to complete the continuing education requirements, or a waiver of part or all of the continuing education requirements for the

- renewal period for which the fiduciary is requesting. The program coordinator shall determine extenuating circumstances determined on an individual basis. In reviewing the request, the program coordinator shall consider if the fiduciary has been unable to devote sufficient hours to fulfill the continuing education requirements during the applicable renewal period because of:
- (1) Full-time service in the armed forces of the United States during a substantial part of the renewal period;
 - (2) An incapacitating illness documented by a statement from a currently licensed physician;
 - (3) A physical inability to travel to the sites of approved programs documented by a statement from a currently licensed physician;
 - (4) Being retired from the fiduciary profession and not performing any fiduciary services; or
 - (5) Any other special circumstances the program coordinator determines appropriate.
- c. A fiduciary whose certificate has been restricted, suspended or revoked by the director is not eligible to request a waiver or extension.
6. In addition to the provisions of subsection R(1) of this Appendix, the program coordinator may require a fiduciary who allows their certification to lapse, or who has been in an inactive status to provide documentation of completion of the required number of continuing education credits for the prior certification period.
7. Appeal. A fiduciary may appeal the decision by the program coordinator to deny continuing education or a request for a waiver or extension of continuing education by filing a written appeal, with the program, within fifteen days of notification of the decision regarding the continuing education credits. The certification of a fiduciary who timely appeals a decision by the program coordinator regarding continuing education shall continue in force until a final decision is made. The program coordinator shall forward the appeal to the deputy director for review and decision. The deputy director shall decide the appeal in writing and instruct the program coordinator to notify the fiduciary in writing of the final decision. The decision is final and binding.

***Adopted by Administrative Order 2003-123, Effective December 17, 2003
Affecting Administrative Order 2002-102***