

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~~ The following definitions apply:

“Accredited” means placement on a list of nationally recognized authorizing agencies the United States Secretary of Education determines to be reliable authorities as to the quality of education or training provided by the institutions of higher education, and the higher education programs they sanction.

“ACJA” means the Arizona Code of Judicial Administration as adopted by the Arizona Supreme Court.

“Active” means a valid and existing certificate to practice as a certified process server.

~~“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 (“AOC”), Arizona Supreme Court.

“Advisory letter” means written communication notifying a certificate holder the conduct, while not warranting discipline, may result in future disciplinary action if not modified or eliminated. An advisory letter is not a disciplinary action.

DRAFTER’S NOTE: The new definitions above are modeled after ACJA § 7-201.

“Applicant” means a person who has submitted a completed application and all required application and fingerprint processing fees.

DRAFTER’S NOTE: The definition of “applicant” is modeled after ARS § 32-2401

“Censure” means a written formal discipline sanction, finding a certificate holder has violated one or more provisions of the statutes, court rules, or ACJA § 7-204.

“Certificate holder” means any entity or individual granted and currently holding valid certification pursuant to statutes, court rules, and ACJA § 7-204.

DRAFTER’S NOTE: The new definitions above are modeled after ACJA § 7-201.

~~“Certification” means a process conducted~~ certificate issued by the presiding judge ~~to determine~~

~~if a person or entity once an applicant meets all the requirements of a private process server, in the profession or occupation, pursuant to statutes, court rules, and the applicable ACJA § 7-204 section.~~

“Clerk” means the elected clerk of the Arizona Superior Court in each county.

~~“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.

“Community college” means an accredited educational institution providing training in the arts, sciences, and humanities beyond the twelfth grade of the public or private high school course of study or vocational education, including terminal courses of a technical and vocational nature and basic education courses.

“Consent agreement” means a written statement to resolve a certification or complaint matter, voluntarily signed by the applicant or certificate holder.

DRAFTER’S NOTE: The new definitions above are modeled after ACJA § 7-201.

“Conviction” means an adjudication of guilt by a federal, state, or local court resulting from trial or plea, including a plea of no contest, regardless of whether the adjudication of guilt was set aside or vacated.

DRAFTER’S NOTE: Modeled after ARS § 32-2401

~~“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.”~~

DRAFTER’S NOTE: See subsection E.

“Director” means the administrative director of the courts, or the director’s designee.

“Division director” means the director of the certification and licensing division of the AOC or the division director’s designee.

“Division staff” means all members of the certification and licensing division of the AOC, including the division director.

“Disciplinary action” means either informal or formal proceedings against a certificate holder

after a finding of probable cause the certificate holder has committed acts of misconduct or violations of statutes, court rules, or ACJA § 7-204.

“Dismissed with prejudice” means final disposition barring future action under this ACJA section on the same issue, claim or cause.

“Dismissed without prejudice” means final disposition with the right to bring future action under this ACJA section on the same issue, claim, or cause.

“Expired” means the certificate has lapsed on a specified date.

“Filing” or “filed” means a document has been received and date-stamped by the clerk.

“Formal Statement of Charges” means a document setting forth specific acts of misconduct by a certified private process server of statutes, court rules, or ACJA § 7-204, including any amendments approved by the court, upon a determination of probable cause.

“Formal Disciplinary Proceedings” means the process initiated upon a determination of probable cause the alleged acts of misconduct or violations of the statutes, court rules, or this ACJA § 7-204 section by a certified process server that, if true, would warrant a censure, consent agreement or other negotiated settlement, restrictions, probation, additional training, a cease and desist order, suspension, or revocation of certification pursuant to subsection (H). ~~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.~~

“Good cause” means a legally sufficient ground or reason based upon the circumstances of the presented case.

DRAFTER’S NOTE: Modeled after ACJA § 7-201.

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

“Inactive” means a certified private process server who voluntarily decides not to practice in the specified profession or occupation for a specified period of time and who is not the subject of any pending disciplinary action.

DRAFTER’S NOTE: Modeled after ACJA § 7-201.

“Informal Disciplinary Proceedings” means the process initiated upon a determination of probable

cause the alleged acts of misconduct or violations of the statutes, court rules, or ACJA § 7-204 by a certificate holder that, if true, would warrant a letter of concern, pursuant to subsection (H), 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.

“Injury” means harm to a client, customer, the public, judicial or legal system, or the profession or occupation resulting from a certificate holder’s misconduct.

“Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

“Letter of concern” means a written informal discipline sanction finding a certificate holder has violated one or more provisions of the statutes, court rules, or ACJA § 7-204.

“Minimum competencies” means having the required skills for an adequate level of performance.

“Negligence” means deviation from the standard of care a reasonable certificate holder would exercise in the situation.

DRAFTER’S NOTE: The new definitions above are modeled after ACJA § 7-201.

“Presiding judge” means the presiding judge of the Arizona Superior Court or the presiding judge’s designee.

“Probable cause” means reasonable grounds for belief in the existence of facts concerning alleged acts of misconduct or violations by a certificate holder, warranting informal or formal discipline against the certificate holder.

“Probation” means a written formal discipline sanction finding a certificate holder has violated one or more provisions of the statutes, court rules, or ACJA § 7-204, but allowing the certificate holder to practice as a process server under specified conditions for a set period of time.

“Private Process Server” means a person, ~~duly appointed or registered~~ certified pursuant to the requirements in A.R.S. §_11-445(H) (I), ~~this code~~ ACJA § 7-204 section, and any other applicable statute or rule. As defined by A.R.S. §_11-445(H)(I), 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.~~

DRAFTER’S NOTE: See section E. It is recommended the provisional certification provisions be stricken. Most other professions require the criminal history to be completed, with the return of the information from the fingerprint cards, before granting of any certificate or license.

“Professional regulatory entity” means a government or private unit associated with and having authority over a group of qualified and practiced individuals in a profession or occupation.

“Revoked” or “revocation” means a written formal discipline sanction, finding a certificate holder has violated one or more provisions of the statutes, court rules, or ACJA § 7-204 and the certificate to practice as a process server is rescinded. ~~the permanent invalidation or cancellation of a private process server’s certificate.~~

“Sanction” means an explicit and official action resulting from an informal or formal disciplinary action finding a certificate holder has violated or failed to comply with one or more of the statutes, court rules, ACJA § 7-204, or court orders relevant to the certificate holder’s profession or occupation.

“Section” means the referenced provision of ACJA § 7-204.

~~“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” or “suspension” means a written formal discipline sanction finding a certificate holder has violated one or more provisions of the statutes, court rules, or ACJA § 7-204 and the private process server’s certificate is not revoked, but the certificate holder is not permitted to exercise the privileges of the certificate for a set period of time as the result of a final order of a disciplinary action.

“Valid” means a certificate issued by the presiding judge that is currently in effect and not expired, surrendered, suspended, or revoked.

“Voluntary surrender” means a certificate holder decides to discontinue practice as a process server and returns the certificate to the presiding judge for review and acceptance pursuant to subsection (E).

DRAFTER’S NOTE: The voluntary surrender definition and the added provisions in subsection E are modeled after ACJA § 7-201 and allows for a certificate holder, in good standing, to voluntarily surrender their certificate. This action is distinguished from a certificate holder who

allows their certificate to lapse, or where the certificate is suspended or revoked as the result of disciplinary action.

B. Applicability. This ~~ACJA~~ ~~code~~ section applies to the certification of private process servers pursuant to A.R.S. § ~~(H I)~~ and the Arizona Rules of Civil Procedure. This ~~ACJA~~ ~~code~~ ~~provision~~ ~~section~~ applies to the application, certification and discipline of all private process servers in the State of Arizona. This ~~AJCA~~ ~~code~~ section governs private process server certification separately and without reference to ~~ACJA~~ § 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.

DRAFTER’S NOTE: The last sentence in paragraph B above is being stricken as the Rules of Civil Procedure are being amended to correctly reference “certification” of process servers. Registration is a term commonly used in the regulatory field to refer to those situations where an individual simply signs up to put their name on a list or register – there are no requirements to meet or standards to comply with. If the proposed rule changes are adopted, these rule amendments would take effect on January 1, 2013.

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 I)~~, the Arizona Rules of Civil Procedure, administrative orders and ~~this administrative code section~~ ACJA § 7-204 as adopted by the Arizona Supreme Court to govern private process servers. Certified private process servers may serve all process, writs, orders, pleadings or papers 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~~ ACJA 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.”

DRAFTER’S NOTE: The Rule Petition that was filed with proposed amendments to Rule 4(e) maintains the language regarding a private process server being able to serve statewide.

D. Administration.

1. Role and Responsibilities of the Supreme Court. Pursuant to A.R.S. § 11- 445(I) and Rule 4(e), Arizona Rules of Civil Procedure, the supreme court is responsible for administration of the private process server program and shall adopt rules for administration of the program.
- 1 2. Role and Responsibilities of the Administrative Director. The director as designated by the Az. Const. Art. 6 § 7:
 - a. ~~shall~~ Shall:

- (1) ~~have the authority to approve~~ Approve or disapprove matters of administration of the Private Process Server Program that involve the expenditure of program funds-;
 - (2) Appoint and supervise all division staff;
 - (3) Adopt policies and procedures, including forms, for administration of the Private Process Server Program; and
 - (4) Ensure implementation of the applicable laws, court rules, and ACJA § 7-204.
- b. ~~May: 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.

DRAFTER'S NOTE: Modeled after ACJA § 7-201.

23. Role and Responsibilities of ~~the Program Coordinator~~ Division Staff.

- a. The director shall designate a ~~program coordinator~~. ~~The program coordinator is responsible for~~ the division director and other division staff to assist in the administration of the Private Process Server Program in compliance with the law, Arizona Rules of Court, and Arizona Supreme Court administrative orders, and ACJA § 7-204 ~~this code section~~. The division director ~~program coordinator~~ may delegate any duties and responsibilities to division staff.
- b. ~~The program coordinator shall maintain~~ Division staff shall:
 - (1) ~~The program coordinator shall perform~~ Perform tasks of administration of the Private Process Server Program to assist in the decentralized administration of the program in each county in Arizona-;
 - (2) ~~The program coordinator shall provide~~ Provide updates to the clerk of the superior court;
 - (3) ~~make~~ Make recommendations regarding matters pertaining to certification, complaints and investigations; and all other matters relevant to certified private process servers-;
 - (4) 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, county of certification, and any disciplinary action imposed against a certified process server. At a minimum, division staff shall update this list each quarter;
 - (5) Refer any complaint received regarding the actions of a certified process server to the clerk of the county where the alleged violation took place, pursuant to subsection H.

DRAFTER'S NOTE: The changes suggested above propose that the website maintained by the AOC would include the county of certification and any disciplinary action taken against a certified process server.

c. Division staff may:

- (1) The program coordinator may charge Charge for the costs of providing copies of the certification list or any other public records of the program; and
- (2) Refer complaints to another state agency or entity with jurisdiction, if the supreme court or superior court does not have jurisdiction over the complaint.

DRAFTER'S NOTE: New paragraph (c)(2) above is meant to apply to those situations where a complaint is received that does not involve a process server or the service of process. An example would be a complaint alleging an individual improperly notarized a document; that complaint would be referred to the Secretary of State. The new language is modeled after ACJA § 7-201.

~~4.3 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 examination, 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. Shall:

- (1) Distribute application materials, using the application forms provided by the director, and accept applications and fee payments for initial and renewal of certifications;
- (2) Administer and grade the examination for initial certification;
- (3) Process the application materials, including fee payments and fingerprints, and forward the application materials to the presiding judge;
- (4) Issue initial and renewal certificates to qualified individuals, upon approval by the presiding judge;
- (5) Process photographs and issue an identification card to individuals granted certification by the presiding judge;
- (6) Maintain records pertaining to applicants for certification and certified process servers, including:
 - (a) A current list or register of all certified process servers, in a format as provided by the director; and as required pursuant to Rule 4(e), Arizona Rules of Civil Procedure;
 - (b) Certificates issued or denied;
 - (c) Contact information on certified process servers, including address and phone number and any changes to the contact information;
 - (d) Renewal certificates granted or denied;
 - (e) Complaints, investigations and final decisions regarding complaints;
- (7) Provide the following information to division staff:
 - (a) A report, at least each quarter, on all additions, deletions, and revisions to the

certification list, including certificates issued, certificates denied, and changes of address;

- (b) A report, at least each quarter, listing all complaints, investigations pending completion, informal and formal disciplinary proceedings, and final decisions regarding discipline. If a final decision regarding discipline of a certified private process server results in suspension or revocation of a certificate, the clerk shall provide the information to division staff within five days of the final order.
- (c) An annual report naming the staff assigned responsibility for administering the private process server program in the county along with a current address, phone number, and e-mail address of each staff member.

DRAFTER'S NOTE: Paragraphs (D)(4)(a) above and (D)(4)(b) below are primarily reformatting of the current language in § 7-204, with a few exceptions as noted here. The current requirement in § 7-204 is that the clerk provides quarterly notice of any final discipline order. In the event a judge suspends or revokes the certificate of a process server, it is recommended this notice would be provided within five days. Division staff would then update the information on the website immediately. Paragraph (7)(c) above amends language that was previously in § 7-204. The amendment removes the requirement that the clerk annually file "a letter" with the division staff. The new language is intended to allow for more efficient means of providing this information; e.g., email etc.

b. May:

(1) Assign any duties and responsibilities to staff; and.

(2) Coordinate with clerks in other counties for the provisions of services pursuant to this ACJA section, including processing of identification cards and administration of the examination for initial certification.

- ~~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.~~

DRAFTER'S NOTE: Paragraph (d) is stricken because it is now included in subsection (H)(1) that requires all judicial officers, clerks of court and court staff to report violations.

~~45. 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.~~

a. Shall:

- (1) Review all application materials, including criminal history information, and make all final decisions regarding the granting or denial of applications for initial and renewal of certification in the county of residence of the applicant;
- (2) Review and make all final decisions regarding any other certification issues including granting or denying reexamination for an applicant who has previously failed the initial certification examination; and
- (3) Receive complaints pursuant to subsection H and investigate, initiate, and adjudicate disciplinary proceedings.

b. May vest in another judicial officer 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 for Initial Certification. An applicant for initial certification shall apply for initial certification on approved forms and meet the eligibility requirements and fulfill all the requirements of subsection E(2)(a). ~~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 ...”~~

DRAFTER’S NOTE: The Rule Petition that was filed amends Rule 4(d) and Rule 4(e), Arizona Rules of Civil Procedure, to delete any reference to the specific requirements for certification regarding residency, age etc. Instead, the rules now reference ACJA § 7-204. Therefore, the ACJA section will now establish eligibility for certification. If the rule amendments are adopted, they would take effect on January 1, 2013.

a. Eligibility for Initial Certification. The applicant shall:

- (1) Be at least twenty-one years of age;
- (2) Be a citizen or legal resident of the United States; and
- (3) Possess a high school diploma or a general equivalency diploma evidencing the passing of the general education development test;

DRAFTER’S NOTE: The 21 year age requirement is the current requirement in the Rules of Civil Procedure and in § 7-204. The new provisions in paragraph (2) regarding the requirement of the applicant to be a US citizen or legal resident are pursuant to legislative enactments that require regulatory entities to ensure that applicants granted certifications or licenses are citizens or legal residents.

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)(I), a government employee shall submit a completed fingerprint

card and pay the applicable fees pursuant to subsection E 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 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~~ ACJA 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. Application Procedures for Initial Certification. ~~To apply for certification, an An~~ applicant shall: ~~apply for certification in the approved format and file the application with the clerk:~~

- (1) Provide a completed application for certification ~~on~~ in an approved ~~form~~ format obtained from and filed with the clerk of the superior court in the county of residence of the applicant. From and after January 1, 2013, a non Arizona resident may apply for certification in any county. ~~The applicant shall sign the application and have it duly verified under oath;~~ The applicant shall submit documentation of U.S. citizenship or alien status, with the application, in compliance with A.R.S. § 41-1080.

DRAFTER'S NOTE: The proposed changes to the Rules of Civil Procedure and ACJA § 7-204 strike the requirement that an applicant be a resident of Arizona. Therefore, provisions that allow non Arizona residents to apply in any county are added to paragraph (1) above. Once certified, a non Arizona resident private process server would apply for renewal of certification in the original county that granted the certification. See Section G(3) for the renewal process for a non Arizona resident certified private process server.

- (2) ~~Execute an affidavit stating, pursuant to Rule 4(c), 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;~~
- (23) ~~Pass an examination for initial certification, administered by the clerk of the superior court as prescribed in subsection E(3) of this code section;~~
- (34) Pursuant to A.R.S. §_11-445(H)(I):

. . . 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 fingerprints ~~card~~. The applicant shall pay all costs or fees attributable to any subsequent refingerprinting 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 fingerprints ~~cards~~ and the fees to the Arizona Department of Public Safety (ADPS). Pursuant to A.R.S. §_11-445(H)(I), . . . 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;
- (45) Provide additional background information, upon ~~Upon~~ the request of the presiding judge, clerk, or designee ~~provide additional background information~~;
- (56) Pay all fees as authorized by law to the clerk ~~of the superior court~~ pursuant to A.R.S. §_12-284; and
- (67) ~~Provide two color photographs, (2" X 2"), and references as required by policy adopted by the director.~~ Provide photographs of a number and in the format prescribed in policies adopted by the director.

DRAFTER'S NOTE: Specific reference to the number and type of photographs is stricken, to allow for flexibility across the state. Some of the counties have purchased equipment to take the photographs and produce the identification cards. In other counties, the applicant may be required to submit photographs and these will then be used to produce the statewide approved identification card. The requirement for the applicant to submit references is stricken – in most professions/occupations, references are no longer required for certification or licensure. The information obtained from the references is limited and requiring applicants to submit this information also imposes a burden on staff to then contact/check the references as part of the background investigation.

3. Examination.

a. Initial Certification State Examination. Each applicant for certification ~~or renewal~~ shall personally take and pass the initial certification state examination provided by the director ~~and administered and scored by the clerk of the superior court.~~ The clerk of the ~~superior court shall give~~ administer the initial certification state examination to each applicant ~~an initial examination.~~

b. The clerk shall communicate the applicant's passage or failure of the examination in writing to the applicant not more than ten days from the date the applicant took the examination:

(1) The applicant will not receive the examination score.

(2) If the applicant fails the examination, the clerk shall inform the applicant that a reexamination is required to meet all qualifications for initial certification and shall provide the applicant with information on the procedures for reexamination.

(3) An applicant may, on written request, review the applicant's answer sheets and grades under the terms and conditions prescribed by the director.

(4) The applicant shall not copy materials provided for the applicant's review.

(5) The applicant shall conduct the review during business hours in the presence of the clerk.

~~bc.~~ Reexamination. If the applicant fails the initial certification state examination on the first attempt, the applicant may retake the examination one time under the following conditions: ~~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~~

(1) The applicant is not otherwise disqualified from retaking the examination;

(2) The applicant ~~shall take~~ takes the reexamination within 90 days of the date of filing the application-;

(3) The applicant is provided and shall take a different examination than the one the applicant used for the initial reexamination-;

(4) If the applicant fails the reexamination, the applicant shall wait 90 days from the date of reexamination to submit a written request for an additional reexamination ~~pursuant to subsection E(3)(b0(1) of this code section~~ under the following conditions:

(a) ~~(4)~~ The applicant may submit a request in writing addressed to the presiding judge requesting consideration for an opportunity to reapply and sit for the initial certification state examination for a third ~~an additional~~ time;-

(b) Proof of attendance and satisfactory completion shall accompany the written request for a course of study specific to the private process server profession to demonstrate the circumstances and reasons for believing the applicant now possesses the knowledge of the minimum competencies as a private process

server to pass the examination; and

(c) If the presiding judge grants approval for the applicant to take the examination for a third time, approves reexamination, the entire application process begins again, including the payment of fees. The presiding judge has the discretionary authority to may deny or approve a request for reexamination. The decision by the presiding judge to deny the applicant's request to sit for a third examination is final and there is no right to a hearing. If the applicant's request to sit for a third examination is denied, the applicant may not file a new application until twelve months after the presiding judge's decision to deny.

ed. The director shall provide multiple versions of the initial certification state 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 or the answer sheet.

de. The director shall establish the passing score on the initial certification state 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 score, 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.~~

f. An applicant is disqualified from taking any future examination if the presiding judge, based upon information forwarded to the presiding judge by the clerk, determines the applicant engaged in fraud, dishonesty, or corruption while taking the examination or any subsequent examination.

4. ~~Decision Granting Provisional and Standard Certification.~~

a. 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 ACJA § 7-204 ~~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.~~

DRAFTER'S NOTE: Striking of the provisional certification provision is consistent with best practices in the regulatory field.

- 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 ACJA § 7-204 this code section. For good cause shown, the presiding judge may grant certification to an applicant, pending receipt of the national criminal history record checks, if there is a delay in the processing of the criminal history checks that is beyond the control of the applicant or the court.~~

DRAFTER'S NOTE: The new language in paragraph (b) above is intended to address the situation where there may be a long delay in the processing of the criminal history checks by DPS and the FBI. Granting certification without a full criminal history check is not the recommended procedure; however, and the provision above should only be used in extraordinary circumstances where there is a significant delay in the processing of the fingerprints by DPS or FBI.

- c. The presiding judge may transfer the certification of an individual to the county of residence or another county if appropriate.
- d. Certificate Status. All certificates are valid until expired, surrendered, suspended, or revoked.

DRAFTER'S NOTE: Paragraph (d) regarding certificate status is modeled after ACJA § 7-201.

5. Denial of Initial Certification. The presiding judge:

- a. Shall deny certification of the applicant if the applicant does not meet the qualifications or eligibility requirements at the time of the application described in subsection (E) or has not submitted a complete application with all deficiencies corrected, with the applicable documents and fees.

DRAFTER'S NOTE: Modeled after ACJA § 7-201.

ab. The presiding judge may refuse to certify an applicant if one or more of the following is found:

- (1) Material misrepresentation, omission, ~~or~~ fraud, dishonesty, or corruption on the part of the applicant in the application for, or attempt to obtain, certification, including the examination;
- (2) A record of any act constituting material misrepresentation, omission, dishonesty, corruption, 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)(4) A record of conviction by final judgment of a misdemeanor or felony, if the crime has a reasonable relationship to the practice of the private process server profession or occupation, regardless of whether civil rights have been restored. If the person's civil rights have been restored and there is no reasonable relationship to the practice of the private process server profession or occupation, the presiding judge shall not deny certification solely based on the record of conviction;
- (5)(6) A record of denial, revocation, suspension, or any disciplinary action ~~ensure~~ of any professional or occupational license or certificate of the applicant by any federal, state, or local government. The judge shall consider whether the underlying conduct in any other disciplinary action is relevant to certification as a private process server;
- (6) A record of a termination, suspension, probation, or any other disciplinary action regarding past employment if the underlying conduct is relevant to certification as a private process server;
- (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~~ ACJA § 7-204, or court orders governing private process servers.
- (11) The applicant has violated any decision, order, or rule issued by a professional

regulatory entity;

(12) The applicant has violated any order of a court, judicial officer, or administrative tribunal;

(13) The applicant has made a false or misleading statement or verification in support of an application for a certificate filed by another person;

(14) The applicant has made a false or misleading oral or written statement to judicial officers, judicial staff or division staff;

(15) The applicant failed to disclose information on the certification application subsequently revealed through the background check; or

(16) The applicant failed to respond or furnish information to the presiding judge, clerk, or judicial staff when the information is legally requested and is in the applicant's control or is reasonably available to the applicant and pertains to certification or investigative inquiries.

c. The presiding judge shall consider any or all of the following criteria when reviewing the application for certification of an applicant with a misdemeanor or felony conviction, pursuant to subsection (E)(b)(4):

(1) The applicant's age at the time of the conviction;

(2) The applicant's experience and general level of sophistication at the time of the pertinent conduct and conviction;

(3) The degree of violence, injury, or property damage, and the cumulative effect of the conduct;

(4) The applicant's level of disregard of ethical or professional obligations;

(5) The reliability of the information regarding the conduct;

(6) If the offenses involved fraud, deceit, or dishonesty on the part of the applicant resulting in harm to others;

(7) The recency of the conviction;

(8) Any evidence of rehabilitation or positive social contributions since the conviction occurred as offered by the applicant;

(9) The relationship of the conviction to the purpose of certification;

(10) The relationship of the conviction to the applicant's field of certification;

(11) The applicant's candor during the application process;

(12) The significance of any omissions or misrepresentation during the application process, and

(13) The applicant's overall qualifications for certification separate from the conviction.

DRAFTER'S NOTE: Paragraphs (b) and (c) are modeled after ACJA § 7-201. The changes to paragraph (E)(b)(4) above regarding conviction of a felony or misdemeanor are consistent with A.R.S. 13-904(E) which states that a person whose civil rights have been restored may not be disqualified for certification solely because of a prior conviction of a felony or misdemeanor unless the "offense has a reasonable relationship to the functions of the employment or occupation for which the license, permit or certificate is sought."

- 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.~~
- e. ~~Mandatory Denial. The presiding judge shall refuse to certify the applicant if the applicant does not meet the qualifications or eligibility.~~
- 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-subsection, 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. Computation of Time. For the purposes of this section, the computation of days pursuant to Rule 6(a), Rules of Civil Procedure is calculated as follows:

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

F. Role and Responsibilities of Certificate Holders.

1. Code of Conduct. Each certified process server shall adhere to the code of conduct in subsection (J) incorporated as Appendix A.
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.

DRAFTER'S NOTE: The term "identification cards" instead of "identification badges" is being used, to avoid any confusion with peace officer badges, etc. Also refer to the provisions in the Code of Conduct in subsection (J)(6)(c) regarding the prohibition against a private process server displaying a badge.

- b. Certified private process servers shall report lost or stolen identification 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 identification 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~~ A certificate holders holder 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, email 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~~)(I), . . . 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 ~~in on a form~~ format 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 subsection L ~~policies adopted by the director.~~

DRAFTER'S NOTE: Reference to the continuing education "form" is stricken and replaced with "format." This allows flexibility for alternatives to submitting the documentation in paper format.

8. Employment Status of Private Process Servers.

- a. Certified private process servers are not employees of the court, are not appointed by the court and may not in any way represent themselves as such.

DRAFTER'S NOTE: Pursuant to A.R.S. § 11-445(I), certified private process servers are officers of the court, however, they are not appointed by the court. The revised application forms and revised statewide identification cards for process servers identify them as officers of the courts, approved to serve process statewide, but does not include any reference to the process server being "appointed" by the court.

- 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.~~ Expiration Date. All certificates expire at midnight, every three years from date of issuance. All certifications shall continue in force until expired, voluntarily surrendered, placed on inactive status, suspended, or revoked ~~or terminated~~.
- a. ~~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 timely and complete completed application for renewal prior to the expiration of the existing of certification, the existing certification does not expire until the administrative process for review of the renewal application has been completed. presiding judge has approved or denied the application.~~
- b. The presiding judge may request an informal interview with the applicant for renewal to establish if additional information or an explanation of the information provided by the applicant is needed to determine if the applicant continues to meet the qualifications for certification.
- c. 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 to deny, pursuant to subsection H or, if a hearing is requested, until the final decision is made by the presiding judge pursuant to subsection H.
- d. The certificate of a certificate holder who does not supply a complete and timely renewal application and payment of the renewal fee shall expire as of the expiration date of the certificate. If the certificate holder files an application within twelve months after the expiration of the certificate, the presiding judge shall consider the length of time that has lapsed since the expiration of the certificate, the private process server's stated reasons

for failing to renew the certificate timely, and the process server's compliance with all other provisions of ACJA § 7-204, including the completion of continuing education credits. The presiding judge may require the private process server to submit additional information or complete additional continuing education before renewing the certificate, or any other actions the judge deems appropriate. The presiding judge shall treat a renewal application filed after the expiration date as a new application; The presiding judge shall not allow a certified private process server to retake the initial certification examination as an alternative to completing continuing education credits.

DRAFTER'S NOTE: The new language in paragraphs a-c above are modeled after § ACJA 7-201. The new language in paragraph (d) above addresses the issue of process servers avoiding the continuing education requirements by allowing their certificate to expire and then simply applying for initial certification a short period of time after their certificate expires. Allowing process servers to retake the initial certification examination on renewal invalidates the initial examination as a method of determining competency in the field. Alternatives include the presiding judge requiring the process server to complete the continuing education (in some cases judges have required additional hours) or impose some type of sanction or other requirement before granting certification. The language above suggests that a judge may allow a process server to renew their certificate if within 12 months of the expiration date.

- e. The expiration provisions described in subsection G(1)(a) ~~of this code section~~ do 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 in good standing 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 any provision of the statutes, court rules, and this code ACJA section. The surrender does not prevent the commencement of subsequent discipline proceedings for any conduct of the surrendered certificate holder occurring prior to the surrender.
 - a. If the presiding judge accepts the voluntary surrender, the clerk shall designate the certificate of the certificate holder as a "surrendered certificate holder in good standing." The presiding judge shall notify the certificate holder in writing within ten days after the acceptance of the surrender. The clerk shall update the register to reflect this change in status and shall notify division staff.
 - b. The presiding judge shall not accept the surrender if there is a complaint pending against the certificate holder. However, this does not preclude the presiding judge for entering into a consent agreement to resolve the pending complaint, by terms including the voluntary surrender of the certificate, pursuant to subsection H.

- c. The presiding judge shall, within 120 days of the voluntary surrender of the certification, either accept the surrender or institute disciplinary proceedings pursuant to subsection H. If the presiding judge subsequently imposes a sanction pursuant to subsection H upon the certificate of the surrendered certificate holder, the clerk shall change the status of the certificate holder from “surrendered certificate holder in good standing” to that of a person so disciplined. file a notice of hearing regarding a complaint and disciplinary action, or accept the surrender.

DRAFTER’S NOTE: The new provisions regarding voluntary surrender are modeled after ACJA § 7-201.

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, ~~two color photographs (two inches by two inches)~~ and submitting all required documents, including documentation of completion of the required hours of continuing education pursuant to subsection L of this code section. The applicant shall file the application with the clerk ~~of the court~~ in the county of residence of the applicant. From and after January 1, 2013, a non Arizona resident who has been granted certification as a private process server, shall apply for renewal of certification in the county where the initial application for certification was filed and certification was granted.

DRAFTER’S NOTE: The new language in subsection (3) above relates to subsection E(c)(1) on page 12, allowing non residents of Arizona to apply for and be granted certification, from and after January 1, 2013. Note that once granted certification, the nonresident private process server must apply for renewal of certification in the original county of certification. This will prevent any issues with a certified process server attempting to avoid the requirements of renewal of certification, for example, completion of continuing education credits.

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 ACJA § 7-204 ~~this code section~~. This may include fingerprinting, reexamination, ~~and~~ background information, and updated photographs.
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 ~~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 subsection H ~~of 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.

6. Reinstatement after Suspension, Revocation, or Expiration of Certification

- a. A private process server whose certificate has been suspended or revoked by a final order of the presiding judge, or whose certificate has expired, or been voluntarily surrendered, may apply for reinstatement under the following conditions:

(1) An applicant for reinstatement shall file a written application for reinstatement with the clerk, accompanied by the appropriate fees and the following documents:

- (a) The reinstatement form and a copy of the final order of suspension or revocation, or date of voluntary surrender or expiration of certification;
- (b) A detailed description of the applicant's occupation and sources of income or earnings derived during the period between the filing of the final order by the presiding judge or date of expiration or surrender of the certificate; and the date of application for reinstatement;
- (c) A statement of every civil or criminal action and a copy of the action, where the applicant was either plaintiff or defendant, since the submission of the last renewal application or, if no renewal application has been submitted, then since the initial application was submitted;
- (d) A list of all criminal or civil final judgments since the submission of the last renewal application or, if no renewal application has been submitted, then since the initial application was submitted;
- (e) A list of all residences and business addresses since the submission of the last renewal application or, if no renewal application has been submitted, then since the initial application for certification and the date the clerk receives the application for reinstatement;
- (f) A statement of concise facts of how the applicant for reinstatement has maintained the minimum competencies and knowledge during the period of time from the date of the final order of suspension until the date the clerk receives the reinstatement application;
- (g) A statement of concise facts of how the applicant for recertification has maintained the minimum competencies and knowledge during the period of time from the date of the order revoking the applicant's certificate until the date the clerk receives the application for certification;
- (h) A statement of concise facts of how the applicant for recertification has maintained the minimum competencies and knowledge during the period of time from the date of the expiration or voluntary surrender of the certificate;

- (i) A statement of facts supporting reinstatement and recertification again as a certified process server, and
 - (j) A statement of all facts demonstrating the applicant's rehabilitation during the period of time from the date of the presiding judge's order revoking the applicant's certificate or suspending the applicant's certificate, until the date the clerk receives the application for reinstatement or initial certification.
 - b. The presiding judge may require additional information demonstrating the applicant meets the minimum competencies of the profession or occupation. The presiding judge may require the applicant sit for and pass the initial certification examination in order to process the application or determine if the applicant meets the minimum competencies of the profession or occupation. The applicant has the burden of proof to demonstrate, by clear and convincing evidence, the applicant's rehabilitation, compliance with all discipline orders and rules and that the applicant meets the minimum competencies of the profession or occupation. An applicant denied reinstatement by the presiding judge has the right to a hearing pursuant to subsection (H), except if the applicant fails to provide the information within the requested time frame. Failure to provide the information shall result in automatic denial of reinstatement without the right to a hearing.
 - c. Upon submission of all reinstatement requirements of subsection (E), the applicant shall meet all requirements of initial certification pursuant to subsection (E). The applicant for reinstatement after a suspension or revocation shall also pay the fee for reinstatement.
 - d. The presiding judge shall not issue any certification under this section to any person whose certification has been suspended until:
 - (1) The person seeking reinstatement of a suspended certificate has demonstrated all the requirements of the suspension order have been met, and
 - (2) The person qualifies in accordance with the applicable provisions of this section.
 - e. The presiding judge shall not issue any certification under this section to any person whose certification has been revoked until:
 - (1) One year has passed from the date of the presiding judge's final order of revocation;
 - (2) The person seeking certification provides proof of satisfaction of any and all requirements in the order of revocation, and
 - (3) The person again qualifies in accordance with the initial certification provisions of subsection (E).

DRAFTER'S NOTE: The reinstatement provisions are modeled after ACJA § 7-201.

H. Complaints, Investigation, Hearings and Disciplinary Action.

1. Complaints. Filing and General Provisions.

a. Filing of 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, clerks of court, court employees, and certificate holders ~~their designee~~ shall, and any person may, notify the presiding judge if it appears a certificate holder has violated applicable statutes, court rules, or ACJA § 7-204. ~~this code section.~~ A ~~The~~ complainant shall make the complaint in writing with sufficient specificity to warrant further investigation. The complaint shall include the name, ~~and~~ telephone number, and address of the complainant. The complainant shall file the complaint with the clerk in the county where the alleged violation by the certified process server occurred. The clerk shall forward the complaint to the presiding judge.

~~ab.~~ Complaints Initiated by the Presiding Judge. In accordance with subsection H, the presiding judge may direct court staff to investigate allegations of acts of misconduct or violations of statutes, court rules, or ACJA § 7-204 which may result in a complaint, if such investigation protects and serves the best interest of the public. This shall include an investigation where the complainant does not wish to have their identity disclosed to the certificate holder.

~~b c.~~ Anonymous Complaints. The presiding judge shall not accept anonymous complaints.

~~ed.~~ Authority after Expiration. If a complaint or investigation is pending prior to the expiration date of a certificate, the provisions of subsection G regarding the expiration of the certificate do not affect the authority of the presiding judge to:

- (1) Initiate a complaint;
- (2) Investigate a complaint; or
- (3) Take disciplinary action regarding the certificate of a certificate holder.

e. Standing of Complainant. A complainant does not have standing regarding any proceedings and is not a party to any proceedings. The complainant may, upon request to the presiding judge, receive notice of any public proceeding concerning the complaint or any consent agreements. The complainant submits to the jurisdiction of the court for all purposes relating to the proceedings.

DRAFTER'S NOTE: Modeled after § 7-201.

f. Non-abatement. Unwillingness, failure of the complainant to cooperate with judicial officers, judicial staff, staff of the clerk of the court, or division staff, withdrawal of the

complaint or a specific allegation of misconduct or violation contained in the complaint, settlement or compromise between the complainant and the certificate holder, or restitution by the certificate holder shall not abate the processing of any complaint or disciplinary proceeding.

DRAFTER'S NOTE: Modeled after ACJA § 7-201.

- g. Confidentiality. Information or documents obtained or generated by the presiding judge, clerk, director, division staff, or court employees during an open investigation, or received in an initial report of misconduct, are confidential except as mandated by court rules or this section.
- (1) Confidential information may be disclosed during the course of an open investigation:
- (a) To judicial officers, court staff, the attorney general, county attorney, law enforcement, and other regulatory officials;
 - (b) If the presiding judge makes a finding the disclosure is in the best interest of the public and the interest is not outweighed by any other interests; or
 - (c) Is not contrary to law.
- (2) Upon a determination of probable cause, all information and documents are open for public inspection unless:
- (a) Confidential by law or public record rules adopted by the supreme court, or
 - (b) If the presiding judge determines further investigation is necessary, the information or documents and those compiled in the further investigation shall remain confidential until probable cause is determined.
- (3) The address and phone number of the complainant shall remain confidential.

DRAFTER'S NOTE: The above section on confidentiality of complaints is modeled after ACJA § 7-201. Refer to subsection (H)(7)-this is the current language in § 7-204 and is being stricken.

2. Grounds for Discipline. ~~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 has engaged in one or more of the following:
- a. Failed to perform any duty or discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, or this ACJA section;
 - b. Failed to cooperate or supply information to the presiding judge, clerk of the court, judicial staff, or division staff by the specific time stated in any request;
 - c. Aided or assisted another person to provide services requiring certification if the other person does not hold the required certification;

- d. Conviction of a criminal offense while certified by final judgment of a felony relevant to certification;
- e. Failed to provide information regarding a criminal conviction;
- f. Exhibited gross negligence;
- g. Exhibited incompetence in the performance of duties;
- h. Evaded service of a subpoena or notice of the presiding judge;
- i. The existence of any cause for which original certification or any renewal of the certification could have warranted denial as described in subsection E or G.
- j. Engaged in unprofessional conduct including:
 - (1) Assisted an applicant or certificate holder in the use of deception, dishonesty, or fraud to secure an initial certificate or renewal of certificate;
 - (2) Failed to comply with any court order or other regulatory agency order relevant to private process servers;
 - (3) Failed to comply with any federal, state or local law or rule governing the practice of the profession or occupation;
 - (4) Failed to comply with terms of a consent agreement or restriction of a certificate;
 - (5) Failed to retain client or customer records for a period of three years unless law or rule allows for a different retention period;
 - (6) Failed to practice competently by use of unsafe or unacceptable practices;
 - (7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill, and proficiency commonly exercised by the ordinary skillful, careful, and prudent professional certificate holder engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer;
 - (8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice;
 - (9) Used advertising intended to or having a tendency to deceive the public;
 - (10) Used a court certification to deceive the public in level of skills or abilities;
 - (11) Willfully made or filed false reports or records in the practice of the profession or occupation;
 - (12) Failed to file required reports, records, or pleadings in the practice of the profession or occupation;
 - (13) Performed the responsibilities or duties of the profession or occupation when medically or psychologically unfit to do so;
 - (15) Engaged in habitual substance abuse;

- (16) Engaged in undue influence over a client or customer to the benefit, financial or otherwise, of the certificate holder or a third party; or
(17) Violated any statutory, court rule, or the applicable ACJA section regarding a confidentiality requirement.

- ~~(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.~~

DRAFTER'S NOTE: The new grounds for discipline in section 2 above, including "unprofessional conduct" are modeled after ACJA § 7-201.

~~2~~ 3 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.

~~34~~ Preliminary Investigation. If warranted, the presiding judge shall have a prompt, discreet and confidential investigation of the complaint made.

~~45~~ 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~~ ACJA section without providing this notice and the opportunity to respond.

~~5-6~~ 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.

~~67~~ 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~~ emergency 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 presiding judges of the superior court, other clerks of the superior court and the ~~program coordinator~~ division staff of any ~~summary~~ emergency suspension of a certificate holder. Upon receipt of the notice of emergency suspension, division staff shall immediately update the website listing of the private process server to designate the emergency suspension of the certificate.

~~78~~ 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 that 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.~~

DRAFTER'S NOTE: The section on confidentiality has been rewritten and replaced in subsection H(1).

89. 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 ACJA § 7-204 ~~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~~ ACJA § 7-204 ~~regarding disciplinary action~~ refers to the presiding judge, 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 ACJA § 7-204 ~~this code section~~. This notice shall comply with the provisions of subsection H(~~12~~13) ~~of this code section~~.

910. Request for Hearing. All demands for hearing shall specify:

- a. The section of ACJA § 7-204 ~~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~~11. 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 ACJA § 7-204 ~~this code section~~, or upon written demand by a person entitled to a hearing, pursuant to ACJA § 7-204 ~~this code section~~.

~~11~~12. 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.~~ 13 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, ACJA § 7-204 ~~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~~14. 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.

- c. All filings shall comply with Rule 5(h), Arizona Rules of Civil Procedure.

~~14~~15. Discovery.

- a. No discovery is permitted, except as provided in ACJA § 7-204 ~~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~~16. Subpoenas. For the purposes of investigations, hearings or other proceedings under this ~~code~~ ACJA 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~~17. 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.

1718. 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 expected in the Arizona Superior Court.
- c. 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.

d. 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~~ ACJA section.

~~18~~19.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~~20.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~~21.Possible Actions for Resolution of a Complaint.

- a. Upon completion of an investigation concerning alleged misconduct by a certificate holder, which may or may not include informal or formal disciplinary proceedings or 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 Determine no acts of misconduct or violation occurred and no discipline is warranted however, the certificate holder's actions need modification or elimination and issue an advisory letter pursuant to subsection D;~~

- ~~(3) Issue a letter of concern or warning; Mandate additional training Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules or this section and order an emergency summary suspension;~~
 - ~~(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.~~
- (1) Determine no violation exists and dismiss the complaint with or without prejudice;
 - (2) Determine no acts of misconduct or violation occurred and no discipline is warranted; however, the certificate holder's actions need modification or elimination and issue an advisory letter pursuant to subsection (H);
 - (3) Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules or this ACJA section and order an emergency suspension;
 - (4) Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules, this ACJA section and issue an order imposing any or a combination of the following informal or formal disciplinary sanctions:
 - (a) Issue a letter of concern;
 - (b) Issue a censure;
 - (c) Resolve any found acts or violations by consent order or other negotiated settlement;
 - (d) Place specific restrictions on a certificate;
 - (e) Place the certificate holder on probation for a set period of time under specified conditions;
 - (f) Mandate additional training for the certificate holder;
 - (g) Order suspension of a certificate for a set period of time not to exceed three years with specified conditions for reinstatement;
 - (h) Revoke a certificate with specified conditions for reinstatement; or
 - (i) 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.

DRAFTER'S NOTE: The rewrite of the possible actions on a complaint are modeled after ACJA § 7-201.

- ~~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.~~
- b. 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 ACJA § 7-204 ~~this code~~

~~section.~~ Any disciplinary action shall have effect statewide. The clerk ~~of the superior court~~ shall, within ~~ten~~ five days of any such action, notify in writing ~~each clerk of the superior court and the program coordinator~~ division staff of the action taken and of any subsequent changes in the status of the individual's approval to serve process. If the hearing officer issues an emergency suspension of a certificate, the clerk shall immediately notify the presiding judges, clerks and division staff of the action.

2122. 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 clerk ~~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~~ ACJA § 7-204 after the expiration of one year from the date of revocation, and after the person again qualifies in accordance with the ~~applicable~~ reinstatement provisions of ACJA § 7-204 ~~this code section~~.

2223. Filing of Special Action 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~~ ACJA § 7-204 are final. Parties may seek judicial review through a petition for a special action within 35 days after entry of the final order of the hearing officer. The petition for special action shall be pursuant to the Arizona Rules of Procedure for Special Actions.

DRAFTER'S NOTE: The time limit for filing a special action is modeled after ACJA § 7-201.

I. Reserved.

~~Appendix A~~

J. Code of Conduct

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

2. ~~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~~ ACJA 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.
3. ~~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 current and applicable laws and court rules regarding the service of process.
 - b. The private process server ~~has a responsibility to~~ shall 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.
4. ~~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 certified 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~~ not provide or offer 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~~ not use 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 explain the general nature of the served papers but 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 process server may provide general legal information to a client and persons receiving service but shall not represent they are authorized to practice law in this state, nor shall the process server provide any kind of legal advice, opinion or recommendation about possible legal rights, remedies, defenses, options or strategies.
- ij. 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.
- k. The private process server shall only serve the legal documents and papers included in the civil action for which the process server has been retained to serve process. No additional papers, advertisements or brochures are authorized to be included in the service of process.

DRAFTER'S NOTE: New paragraph (i) above is modeled after ACJA § 7-208; new paragraph (k) is modeled after the State of Florida, Pasco County Rules for Process Servers.

- 5. ~~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.

6. Candor.

a. A private process server shall not knowingly:

- (1) Falsify or misrepresent the facts surrounding the delivery of legal process to any person or entity;
- (2) Make a false statement of material fact or law to a tribunal; or
- (3) Fail to disclose a material fact to a tribunal, except as required by applicable law.

b. A private process server shall notify the presiding judge within ten days of a misdemeanor or felony conviction. The private process server shall provide this notice to the presiding judge in the county of certification of the process server.

DRAFTER'S NOTE: Paragraph (6) is modeled after ACJA § 7-201 and the New York State Canons of Professional and Ethical Conduct for Professional Process Servers..

c. A certified private process server may not wear a uniform, use a title, insignia, badge or identification card or make any statement that would lead a person to believe the certificate holder is an employee of a federal government, state government or any political subdivision of a state government unless the certificate holder is so authorized by proper authorities. No badge of any type may be used, shown or offered as identification in conjunction with the identification card or independently.

DRAFTER'S NOTE: Above paragraph is modeled after ARS § 32-2451.

L. Continuing Education Policies

DRAFTER'S NOTES: Subsection L contains the continuing education policies for certified process servers, as adopted by Administrative Directive No. 2003-01, on January 14, 2003. Placement of these policies within ACJA § 7-204 is consistent with the format used for other regulated professions and the applicable sections of the ACJA. New provisions added to the continuing education policies include the requirement that the process server is responsible for accurately recording the CE credit hours, regardless of the number of hours granted by the sponsoring entity, and the additional documentation requirements if the process server is seeking to complete eight or more CE credits within one day.

1. Purpose.

- a. Service of process is integrally related to the prompt, effective and impartial operation of the judicial system. Private process servers are required to demonstrate a basic level of competency to become certified and practice in Arizona. Ongoing, continuing education (CE) is one means to ensure a certified process server maintains continuing competence as a process server after certification is obtained. It also provides opportunities for process servers to keep abreast of changes relating to the service of process, the law, and the Arizona judicial system.
- b. These continuing education policies are intended to provide direction to certified private process servers, and to the presiding judges and clerks who administer the Private Process Server Program in each county; to ensure compliance with ACJA § 7-204 regarding continuing education credits, and to provide for equitable statewide application and enforcement of the continuing education requirements.

2. Applicability. Pursuant to subsection (F), all certified private process servers shall complete at least ten hours of approved continuing education every twelve months in an area relevant to the work of a certified private process server. The private process server shall submit documentation of completion of the continuing education in an approved format with the application for renewal of certification. Pursuant to subsection G, a renewal period is for three years from the date of issuance of the certificate.

3. Responsibilities of Certified Private Process Servers.

- a. It is the responsibility of each certified private process server to ensure compliance with the CE requirements, maintain documentation of completion of CE and to submit this documentation with the renewal application.
- b. Upon request, each certified private process server shall provide any additional information required by the presiding judge when the judge is reviewing the renewal application and CE compliance and documentation.

- c. If an activity has not been pre-approved, the rejection of any activity completed by a private process server and submitted with the application for renewal does not in any way diminish the responsibility of the process server to comply with the CE requirement.

4. Authorized Continuing Education Activities

- a. CE activity shall address the areas of proficiency, competency, and performance of, and impart knowledge and understanding of the service of process, the Arizona judiciary and the legal process, and increase the participants' understanding of the responsibilities of a certified private process server and the process server's impact on the judicial process. Acceptable topics for CE activities include:
 - (1) Ethics for private process servers and court employees, including cooperation with lawyers, judges and fellow private process servers, professional attire, courtesy and impartiality to all litigants, information vs. legal advice and public relations;
 - (2) The Arizona court system, including the state and federal constitution, branches of government, Arizona court jurisdiction and responsibilities, Arizona tribal court system, resource materials including Arizona Revised Statutes, Arizona Rules of Court, case law, and administrative orders; and current issues in the Arizona court system; and
 - (3) Role and responsibilities of the certified private process server including ACJA § 7-204.
- b. Persons developing and presenting CE activities shall have expertise in the curriculum, knowledge of adult education principles, and the ability to prepare and present educational material effectively. The education faculty presenting a CE activity should consist primarily of individuals with experience and expertise in the service of process, legal and judicial community; faculty from other disciplines is permissible when their expertise will contribute to the goals of a specific program. The CE activity shall specify for whom the program is primarily designed, the course objectives, course content and teaching methods. All CE activity shall be conducted in an organized setting free from distractions.
- c. Pre-Approved Activities. Subject to the conditions specified in this policy, programs, seminars and courses of study offered or approved by the following entities are pre-approved and accredited:
 - (1) Arizona Private Process Servers Association (APPSA);
 - (2) Arizona Supreme Court Committee on Judicial Education and Training (COJET);
 - (3) United States Private Process Servers Association (USCRA);
 - (4) Arizona Courts Association (ACA); and
 - (5) National Association of Court Management (NACM).

- d. Sponsoring Entities. Unless a CE activity has been pre-approved, entities wishing to administer a CE activity shall submit the proposed CE activity on the approved form to the division staff of the Arizona Supreme Court, Administrative Office of the Courts (AOC), for consideration prior to conducting the activity. Applications submitted by a sponsoring entity after the CE activity has been completed or conducted will be rejected.
- (1) At a minimum, the proposal shall meet all requirements of this policy and shall include the following:
- (a) location, date and time of the proposed activity, with an agenda that identifies the time allocated for each topic and the time allocated for breaks and other activities that do not qualify for CE credit;
 - (b) proposed audience;
 - (c) course content, objectives, teaching methods and the evaluation method;
 - (d) names and qualifications of the faculty;
 - (e) written materials for the participants (a copy of the materials shall be included with the proposal), and
 - (f) number of CE credits the sponsoring entity is recommending the AOC grant for completion of the activity.
- (2) In addition, the proposal shall include a statement the sponsor agrees to assume responsibility for verifying attendance of the participants; will provide a certificate of attendance for each participant who successfully completes the activity and that upon request of the AOC, will provide any additional information requested to assist the AOC in evaluating whether to approve the activity or to ensure compliance with this policy.
- e. Serving as Faculty. CE credit may be granted for serving as faculty, an instructor, speaker or panel member of an approved CE seminar directly related to the service of process. CE credit will be granted for the actual presentation time, plus actual preparation time up to two hours for each hour of presentation time. A maximum of five hours of CE credit will be granted for serving as faculty in any renewal period and a private process server may not receive credit for presenting a program repeatedly throughout the renewal period. A private process server may receive CE credit for actual presentation time for duplicate programs presented in subsequent renewals periods; but will not be granted CE credit for preparation time for those programs.
- f. Authoring or Coauthoring Articles. CE credit may be granted for authoring or coauthoring an article directly related to the service of process, if the article is published in a state or nationally recognized professional journal relating to the service of process and if the article is a minimum of one thousand words in length. A maximum of one hour of CE credit may be earned for authoring an article or articles in any one renewal period. Credit shall not be granted for the same article published in more than one publication or republished in the same publication in later editions.

- g. University, College and Other Educational Institution Courses. A certified private process server may receive CE credit for a course provided by a university, college, or other educational institution if the private process server successfully completes the course with a grade of “C” or better or a “pass” on a pass/fail system. The private process server may receive CE credit upon documentation the course is relevant to the service of process. If the course is approved, credit will be awarded by multiplying the number of credit hours awarded by the educational institution by two, however, the maximum total of CE credits for completion of courses pursuant to this subsection shall not exceed 50 percent of the total number of CE hours required for the renewal period.
- h. Minimum Time. Each CE 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 CE 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 CE activity, credit may be given in fifteen minute increments. A process server may not use additional earned CE credits for subsequent renewal periods.
- i. Maximum Credit. Unless a CE activity is directly related to the private process server profession, a private process server may not receive more than 50 per cent of the credit requirement for the renewal period through one activity.
- j. Conferences. CE credit may be requested for attendance at a conference relevant to the work of a process server. A process server may receive 100 per cent of the CE credits for attendance at the conference, if the conference is directly related to the work of a process server. The process server must provide documentation of the specific sessions of the conference attended, with documentation of the hours for each session of the conference the process server attended. Credit will not be granted for attendance at general sessions of the conference.
- k. Repeat of an Activity. Generally, credit will not be granted for process servers who repeat an activity within the same renewal period. Exceptions maybe granted if it is determined the activity is directly related to the work of a process server profession and duplication of the continuing education activity will enhance the process server’s knowledge, skill and competency.
- l. Documentation of Attendance or Completion. When attending or completing a CE activity, each process server shall obtain documentation of attendance or completion from the sponsoring entity. At a minimum, this documentation shall include the:

 - (1) name of the sponsor;
 - (2) name of the participant;
 - (3) topic of the subject matter;
 - (4) number of hours actually attended or the number of credit hours awarded by the

sponsoring entity;

(5) date and place of the program;

(6) signature of the sponsor, or the documentation shall be an official document of the sponsoring entity; for example, a college grade report, etc.,

(7) signature of the process server, either in the space specifically provided on the form for this purpose, or the process server may sign across the documentation (for example, the college grade report) to indicate attendance and completion at the activity, and

(8) if the CE activity comprises eight or more hours of credit within one day, the documentation shall include an agenda that specifies the time allocated to each topic and the time for breaks and a lunch break.

m. A process server shall not request and credit shall not be granted if the process server attends part, but not all, of the provided activity. Notwithstanding the signature of the sponsoring entity regarding the CE credits for an activity, it is the responsibility of the process server to accurately calculate the number of hours attended, subtracting out any time for general introductions and other activities that do not qualify for CE credit.

n. Process servers requesting CE credit for self study shall submit documentation of completion on an approved form.

5. Non-Qualifying Activities. The following activities, regardless of whether or not the activity is approved for COJET credit, shall not qualify for CE credit for certified private process servers:

a. Completion of the examination required for initial certification;

b. Attendance or participation at professional or association business meetings, general sessions, elections, policymaking sessions or program orientation;

c. Serving on committees or councils or as officers in a professional organization, and

d. Activities completed as required by the presiding judge as part of a disciplinary action.

6. Decision Regarding Continuing Education Credits.

a. Upon a review of an application for renewal of certification and the required accompanying CE documentation, the presiding judge may:

(1) Approve the CE credit;

(2) Approve part but not all of the requested CE credit;

(3) Require additional information from the requester before making a decision; or

(4) Deny the CE credit.

- b. The private process server shall be notified of the decision regarding the CE credit.

7. Compliance and Non-Compliance.

- a. An applicant for renewal of certification may be requested to supply additional information to verify compliance with the CE requirements. If the applicant fails to provide the requested information, the presiding judge may automatically deny the CE credit.
- b. Pursuant to subsection (H)(l); a certified private process server who fails to meet the CE requirement, falsifies CE documents, willfully misrepresents CE activities and attendance at CE activities or attempts to circumvent the CE requirement by submitting an initial application for certification within twelve months of the expiration of the original certificate, is subject to denial of renewal of certification, disciplinary action, or both.

DRAFTER'S NOTE: The language regarding the attempt to circumvent the CE requirement is new and is intended to address the issue of certified process servers who fail to complete their CE and then apply for "initial certification" shortly after expiration of their certification.