

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of:	)	
	)	
ARIZONA CODE OF JUDICIAL	)	Administrative Order
ADMINISTRATION ' 7-201:	)	No. 2003 - <u>109</u>
GENERAL REQUIREMENTS	)	(Replacing Administrative Order
	)	No. 99-43 )
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The above captioned provision having come before the Arizona Judicial Council on October 15, 2003, and having been approved and recommended for adoption,

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

IT IS ORDERED that the above captioned provision, attached hereto, is adopted as a section of the Arizona Code of Judicial Administration replacing Administrative Order No. 99-43 and repealing Rule 1: General Program Administrative Rules.

IT IS FURTHER ORDERED that this section of the Arizona Code of Judicial Administration is effective on January 1, 2004.

Dated this 4th day of December, 2003.

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CHARLES E. JONES  
Chief Justice

# ARIZONA CODE OF JUDICIAL ADMINISTRATION

## Part 7: Administrative Office of the Courts Chapter 2: Certification and Licensing Programs Section 7-201: General Requirements

### A. Definitions.

“Active” means a valid and existing certificate to practice in the specified profession.

“Advice” or “advisory letter” means written communication reminding a certificate holder of the obligations of certification, or an instruction designed to assist the certificate holder in improving or modifying behaviors or procedures.

“Censure” means an official statement of displeasure identifying a certificate holder has violated a provision of the applicable sections of the Arizona Code of Judicial Administration (ACJA) or statutes.

“Certificate holder” means any entity or individual granted certification pursuant to the applicable ACJA section and Arizona law.

“Certification” means a certificate issued by the program coordinator to a person or entity when the person or entity has met all requirements for certification, pursuant to the applicable ACJA section and Arizona law and has been granted an authorized document and certification number attesting the certificate holder may exercise the privileges of certification.

“Complaint” means a written statement of allegations against a certificate holder that initiates an investigation.

“Deputy director” means the deputy director of the administrative office of the courts (AOC), or the deputy director’s designee.

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

“Disciplinary action” means a decision to begin either informal or formal disciplinary proceedings against a certificate holder, after a finding of probable cause the certificate holder has committed misconduct.

“Expired” means the certificate of a certificate holder has lapsed on the specified expiration date, the certificate has not been renewed and the certificate holder is no longer authorized to practice in the specified profession or occupation.

“Formal disciplinary proceedings” means the process initiated upon a finding of probable cause where a document is served on a certificate holder setting forth specific acts of alleged misconduct by the certificate holder and notifying the certificate holder of the intent to seek disciplinary action and the certificate holder’s right to request a hearing.

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

“Hearing officer” means an individual appointed pursuant to this section, to preside over an administrative hearing regarding the denial of initial or renewal certification or a complaint regarding alleged misconduct of a certificate holder.

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

“Informal disciplinary proceedings” means the process initiated when a determination is made that the alleged misconduct by the certificate holder does not warrant the filing of formal charges.

“Letter of concern” means communication stating a certificate holder has violated a provision of the applicable sections or statutes and a finding by the director informal discipline is appropriate.

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

“Probation” means a sanction that allows the certificate holder to practice in their profession or occupation under specified conditions.

“Program coordinator” means the staff appointed by the director to administer a program.

“Program specific section” means the adopted section of the ACJA applicable to a specified profession or occupation governed by this section, specifically, §7-202: Fiduciaries; §7-203: Confidential Intermediary and §7-205: Defensive Driving Program.

“Registration” means, for the purposes of this section and the program specific sections, the same as “certification.”

“Revoked” or “revocation” means a certificate is terminated as a result of disciplinary action, after a finding of probable cause pursuant to formal disciplinary proceedings.

“Sanction” means an explicit and official action by the director resulting from a certificate holder’s failure to comply with the laws, court rules, ACJA sections or court orders relevant to the certificate holder’s profession or occupation.

“Section” means the referenced provision of the ACJA.

“Suspended” or “suspension” means a 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 disciplinary action by the director.

“Valid” means a certificate currently in effect, issued and signed by authorized staff of the applicable program and not expired, surrendered, suspended, or revoked.

“Voluntary resignation” means a process where a certificate holder voluntarily decides to discontinue practice in the specified profession or occupation and surrenders their certificate to practice.

**B. Applicability.** This section is read together with the program specific section applying to the applicant’s or certificate holder’s profession or occupation. In the event of any conflicts between this section and the program specific section, the program specific section shall govern. Reference to “these sections” refers to ACJA §7-201: General Requirements and the program specific sections. §7-201 applies to certification of confidential intermediaries pursuant to A.R.S. §8-134 and ACJA §7-203, certification of fiduciaries pursuant to A.R.S. §14-5651 and ACJA §7-202 and certification of defensive driving schools and instructors pursuant to A.R.S. §§28-3395 through -3399 and ACJA §7-205.

**C. Purpose.** This section specifies the application, certification and renewal of certification and the complaint, disciplinary and hearing process for the certification programs. The purpose of the certification and discipline processes is protection of the public.

**D. Administration.**

1. Role and Responsibilities of the Supreme Court. Pursuant to A.R.S. §8-134(I), §14-5651(A) and §28-3395(B), the supreme court is responsible for administering the Confidential Intermediary Program, Fiduciary Program and Defensive Driving Program.
2. Role and Responsibilities of the Director. The director:
  - a. Shall develop application and renewal forms, training, certification examinations and policies and procedures in conformity with this section and the program specific sections, §§7-202, -203 and -205. The director is responsible for enforcement of the applicable laws, this section and the section of the ACJA applicable to each profession or occupation. The director may

delegate any other person to exercise or discharge any power, duty or function, whether ministerial or discretionary, vested in the director. The designated person shall act on behalf of the director and by delegated authority.

- b. Has the authority to approve or disapprove matters of administration of each program.
- c. May appoint an advisory committee to make recommendations on any matter and may develop guidelines for the appointment, term of appointment of committee members and meeting requirements.
- d. Shall resolve complaints alleging misconduct by certificate holders and may take any of the actions specified in subsection H(24).
- e. May, pursuant to the ACJA, administrative orders and A.R.S. §41-2401(D)(8), initiate an audit or review of a certificate holder to determine if the certificate holder is in compliance with statutes, court rules, administrative orders, court orders, local rules, the ACJA including the codes of conduct and any other legal or ethical requirement relating to the certificate holder's profession or occupation. The following provisions apply to audits or reviews:

(1) Confidentiality.

- (a) Working papers associated with the audit or the review of files maintained by the programs are not public records and are not subject to disclosure, except to court staff in connection with their official duties, the attorney general, county attorney or law enforcement agencies.
- (b) Upon completion of an audit or review the final report issued to the affected party is a public record subject to public inspection.

(2) Subpoena. The director may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the audit or review.

(3) Referral. Where appropriate, the director may refer the audited or reviewed certificate holder for investigation by a pertinent agency, including investigation by the program specific to the certificate holder's profession or occupation.

(4) Violations or Noncompliance. Wilful violation of or wilful noncompliance with an order of the director regarding the audit or review; or wilful noncompliance with a corrective action plan resulting from an audit or review, may result in an order directing the certificate holder to comply. The director may forward a copy of the order or report to the superior court and request the superior court issue an order to require the appearance of the person or the compliance with the director's order, or both. The superior court may treat the failure to obey the order as contempt of court and may impose penalties as though the certificate holder had disobeyed an order issued by the superior court.

3. Role and Responsibilities of the Deputy Director. The deputy director shall:
  - a. Serve as the probable cause panelist to review the recommendations of staff regarding a complaint alleging misconduct by a certificate holder, pursuant to subsection H(4);
  - b. May, on the deputy director's own initiative, direct staff to initiate an investigation into alleged misconduct by a certificate holder pursuant to subsections H(3) or H(4); and;
  - c. Serve in place of the director, when designated by the director.
4. Role and Responsibilities of the Program Coordinator. The director shall designate a program coordinator. The program coordinator shall administer the program in compliance with applicable statutes, court rules, administrative orders, this section and the program specific section.
5. Computation of Time. For the purposes of this section and the program specific section, the computation of days is calculated as follows: if less than 11 days, intermediate Saturdays, Sundays and legal holidays are not included in the computation and if 11 days or more, intermediate Saturdays, Sundays and legal holidays are included in the computation.

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

1. Eligibility for Application. An applicant who meets the required eligibility for certification, as specified in this section and the program specific section, may apply for certification.
2. Application for Initial Certification.
  - a. Forms. An applicant shall apply for certification on forms provided by the program. The applicant shall sign the completed application, have it duly verified under oath and file it with the program.
  - b. Fees. The program shall collect in advance the applicable certification and training fees specified in the program specific section. The fees are not refundable. An applicant shall make the payment payable to the Arizona Supreme Court, AOC.
  - c. Fingerprinting. If required by the program specific section, pursuant to law, the applicant shall submit a full set of fingerprints, with the fee established by law, to the program for the purpose of obtaining a state and federal criminal records check.
    - (1) The applicant shall provide the program with a readable fingerprint card. The applicant shall pay any costs attributable to the original fingerprinting or subsequent re-fingerprinting due to unreadable fingerprints and any fees required for the submission or resubmission of fingerprints.

- (2) The program shall require the applicant, if definitive fingerprints are not obtainable, to make a written statement, under oath, that the applicant has not been arrested, charged, indicted, convicted of or pled guilty to any felony or misdemeanor, other than as disclosed on the application. If the applicant fails to provide the statement, the program coordinator shall refuse to further process the application.
  - (3) The program coordinator may waive the requirement for a fingerprint card and the criminal background check if the applicant has previously provided a fingerprint card to the program and the background check of the applicant has been completed.
  - (4) The program shall submit completed applicant fingerprint cards and the applicable fees to the Arizona Department of Public Safety, in accordance with A.R.S. §41-1750 and Public Law 92-544.
- d. Initial Training. If required by the program specific section, an applicant shall attend and complete the initial training session. The program coordinator shall provide the applicant with a document signifying the applicant completed the training. If required by the program specific section, an applicant shall attend the entire training session for eligibility to sit for a certification examination.
- e. Examination. If required by the program specific section, an applicant shall take and pass the examination for initial certification.
- (1) Administration of the Initial Examination: In administering the examination, the program coordinator shall:
    - (a) Offer the examination on dates in conjunction with the initial training for certification, if initial training is required by the program specific section;
    - (b) Establish a passing grade on the examination and announce this prior to administering the test;
    - (c) Use multiple versions of the test and ensure no copies of the test are released to applicants or the public;
    - (d) Inform each applicant in writing as to whether the applicant passed or failed the examination and if the grade is failing that a reexamination is required; and
    - (e) Make and keep an accurate record of each examination used at each administration of the examination and the score of each person taking the examination.
  - (2) Administration of Reexaminations. The program coordinator shall allow an applicant who fails the examination to:
    - (a) Review the examination papers and grades of the applicant, upon written request. The applicant shall conduct the review during business hours in the presence of program staff and the applicant shall not copy materials provided for the review.
    - (b) Retake the examination one time under the following conditions:
      - (i) The applicant is not disqualified from retaking the examination;

- (ii) The applicant sent a written request to retake the examination to the program coordinator within 30 days of the date of the receipt of the examination results; and
  - (iii) The applicant takes the reexamination within 90 days of the date of the notice of the examination results.
- f. Additional Information. The program coordinator may require the applicant to provide additional information reasonably necessary to determine if the applicant meets the qualifications specified in this section and the program specific section.
- g. Incomplete Applications. The program coordinator may not process an application until the application is complete.

### 3. Decision Regarding Certification.

- a. Notification of Certification. The program coordinator shall promptly certify and notify qualified applicants of certification in writing, in accordance with this section and the program specific section. Each qualified applicant shall receive a document, badge or card evidencing certification, stating the applicant's name, date of certification, certificate number and expiration date of the certification. Each certificate shall expire as provided in the program specific section. In addition, unless previously provided, each applicant granted certification shall receive a copy of this section and the program specific section, detailing the responsibilities of the certificate holder.
- b. Certificate Status. All certificates are valid until expired, surrendered, suspended, or revoked.
- c. Denial of Initial Certification.
  - (1) The program coordinator shall deny certification of the applicant if the applicant does not meet the qualifications or eligibility requirements described in this section or the program specific section or has not submitted the applicable documents and fees.
  - (2) The program coordinator may deny certification of any applicant for good cause if one or more of the following is found:
    - (a) Material misrepresentation, omission, fraud, dishonesty, or corruption in the application form or attempt to obtain the certification, or in the examination for certification. An applicant's failure to disclose information on the application, subsequently revealed through the fingerprint background check or the investigation of the applicant's application for certification, may constitute good cause for denial of certification;
    - (b) A record of any act constituting material misrepresentation, omission, fraud, dishonesty or corruption on the part of the applicant or an officer, director, partner, member, trustee, or manager of the applicant in business or financial matters;

- (c) A record of conduct showing the applicant or an officer, director, partner, member, trustee, or manager of the applicant is incompetent or a source of injury and loss to the public;
  - (d) A record of a series of complaints by the public, the court or other licensing and regulatory entities;
  - (e) The applicant or an officer, director, partner, member, trustee, or manager of the applicant has a record of conviction by final judgment of a felony, regardless of whether civil rights have been restored;
  - (f) A record of conviction by final judgment of a misdemeanor involving moral turpitude of the applicant or an officer, director, partner, member, trustee, or manager of the applicant or conviction of a crime that has a reasonable relationship to the practice of the certified profession or occupation, regardless of whether civil rights have been restored;
  - (g) Denial, revocation, suspension or any censure of any professional or occupational license or certificate of the applicant or an officer, director, partner, member, trustee, or manager of the applicant;
  - (h) The applicant or an officer, director, partner, member, trustee, or manager of the applicant has been found civilly liable in an action involving misrepresentation, material omission, fraud, misappropriation, theft or conversion;
  - (i) The applicant or an officer, director, partner, member, trustee, or manager of the applicant is currently on probation, parole, or named in an outstanding arrest warrant of any court;
  - (j) The applicant or an officer, director, partner, member, trustee, or manager of the applicant has violated any decision, order, or rule issued by the profession's or occupation's certification program;
  - (k) The applicant or an officer, director, partner, member, trustee, or manager of the applicant has violated any order of a court, judicial officer or administrative tribunal;
  - (l) The applicant or an officer, director, partner, member, trustee, or manager of the applicant has made a false or misleading statement or verification in support of an application for a certificate filed by another person;
  - (m) The applicant or an officer, director, partner, member, trustee, or manager of the applicant has made a false or misleading oral or written statement to the program;
  - (n) The applicant or an officer, director, partner, member, trustee, or manager of the applicant has failed to respond or furnish information to the program when the information is legally requested by the program and is in the certificate holder's control; or
  - (o) If the applicant is a business, a record of conduct constituting dishonesty or fraud on the part of an employee, board member, or the business.
- (3) The program coordinator shall promptly, in writing, notify each applicant denied certification of the reasons for the denial and the right of the applicant to a hearing, pursuant to subsection E(3)(c)(4).

- (4) An applicant is entitled to a hearing, on the decision to deny certification if a written request for a hearing is received by the program 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. The provisions of subsections H(10) through H(23), H(25) and H(27) apply regarding procedures for the hearing and appeal.
- d. **Time Limits on Certification.** Applicants shall respond timely to requests for information from the program coordinator and program staff pertaining to their application. Unless the applicant can show good cause as to why the program coordinator should grant additional time, the program coordinator shall not approve any applicant for certification unless the applicant successfully completes all requirements within twelve months of initial application for certification or passing the program specific examination for certification. Failure to complete the certification process within this time period shall nullify and void all applicable examination scores and the applicant shall be required to successfully retake all required examinations and pay the appropriate fees.
- e. **Access to Records of Applicants for Certification and Certificate Holders.** Unless otherwise provided by law, the following applies to applicant and certificate holder records:
- (1) Applicant records are not open to the public except for the name of the applicant; and
  - (2) Certificate holder's certification records are open to the public, after home addresses, home or cellular telephone numbers, social security numbers and all other personally identifying information, except for the name of the certificate holder, have been redacted.
- f. **Retention of Records.** The program shall retain the records of applicants or certificate holders for a period of five years from the last activity in the record.
- g. **Unlawful Use of Designation or Abbreviation.** A person who has received from the program coordinator a certificate to practice in the program specific profession or occupation is authorized to utilize the designation of "Arizona certified" in connection with their title or name and may use any appropriate abbreviation connected with this certification. No other person or business shall assume or use the title, designation or abbreviation or any other title, designation, sign or card, the use of which is reasonably likely to induce others to believe the person or business holds valid certification issued by the Arizona Supreme Court in the specified profession or occupation.

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

1. **Code of Conduct.** Each individual certificate holder shall adhere to a program specific code of conduct if adopted by the supreme court.

2. Identification. If required by the program specific section, or upon request by any judicial officer, court employee or member of the public, a certificate holder shall provide proof of certification.
3. Assumed Business Name. A certificate holder shall not transact business in this state under an assumed name or under any designation, name or style, corporate or otherwise, other than the legal name of the individual or business entity unless the person or business entity files with the program a statement indicating the name for transaction of the business and the legal full name of the certificate holder.
4. Response. An applicant or certificate holder shall respond to requests for information from and shall provide documents to the director, deputy director, program coordinator and program staff pertaining to certification, renewal of certification, complaints alleging misconduct by the certificate holder, investigative inquiries by the director, deputy director, program coordinator or program staff, and any audits or reviews of the practice of the certificate holder. The certificate holder shall respond to any subpoenas or orders issued by the director or any judicial officer. Failure to comply with this subsection by an applicant for certification constitutes good cause to deny the application for certification or renewal of certification. Failure to comply with this subsection by a certificate holder constitutes grounds for discipline.
5. Candor. A certificate holder shall not knowingly:
  - a. Make a false statement of material fact or law to a tribunal; or
  - b. Fail to disclose a material fact to a tribunal, except as required by applicable law.
6. Change of Name or Address. A certificate holder shall notify the program of any change in name or business, directory, mailing or home address, telephone number or email address within 30 days of any change. The certificate holder shall make this notice in writing by U.S. Post, facsimile or email.
7. Voluntary Resignation. A certificate holder in good standing may resign a certificate, however, the resignation is not valid until accepted by the program coordinator. The program coordinator may require additional information reasonably necessary to determine if the certificate holder has violated any provision of this section or the program specific section. The program coordinator shall, within 120 days of the receipt of the voluntary resignation of the certification, either accept the resignation, or the deputy director, based upon the recommendations of the program coordinator, shall institute disciplinary proceedings pursuant to subsection H(1)(a). Upon acceptance of the voluntary resignation, the program coordinator shall designate the certificate of the certificate holder as a “resigned certificate holder in good standing.” The resignation does not prevent the commencement of subsequent discipline proceedings for any conduct of the resigned certificate holder occurring prior to the resignation. If the director subsequently imposes a sanction

upon the certificate of the resigned certificate holder pursuant to subsections H(24) and H(25), the program coordinator shall change the status of the resigned certificate holder's from "resigned certificate holder in good standing" to that of a person so disciplined. The program coordinator shall not accept the resignation if there is a disciplinary complaint pending against the certificate holder.

8. Inactive Status. A certificate holder may transfer to inactive status, upon written request to the program coordinator. Upon acceptance by the program coordinator, the certificate holder shall be placed on inactive status, in good standing. The inactive certificate holder shall not engage in the practice of the profession or occupation of certification for a fee or other compensation while on inactive status and shall not present themselves as a certificate holder. Upon application and payment of any applicable reactivation of certification fee, required by the program specific section, the program coordinator shall return the inactive certificate holder to active status.

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

1. Expiration Date. Certificates shall expire on the date specified by the program specific section. When a certificate holder has filed a timely and complete application for the renewal of certification, the existing certification does not expire until the administrative process for review of the renewal application has been completed. If the renewal application is denied, the existing certification does not expire until the last day for seeking a hearing on the decision pursuant to subsection E(3)(c)(4), or if a hearing is requested, until the final decision is made by the director pursuant to subsection H(25). Any certification for which the request for renewal and payment of the fee is not received by the program shall expire as of the expiration date in the program specific section. The program coordinator shall treat any renewal application received after the expiration date as a new application.
2. Application. The certificate holder is responsible for applying for a renewal certificate. The certificate holder shall apply for renewal of certification on the form provided by the program. The program coordinator may set a deadline renewal application date, in advance of the expiration date, to allow a reasonable time frame for processing the renewal application.
3. Additional Information. Before granting renewal of certification, the program coordinator may require additional information reasonably necessary to determine if the applicant continues to meet the qualifications specified in this section, which may include fingerprinting pursuant to subsection E(2)(c) or background information, pursuant to subsection E(2)(f) and the program specific section.
4. Decision Regarding Renewal.

- a. The program coordinator may renew a certification if the certificate holder meets all requirements for renewal as specified in this section and the program specific section and pays the renewal fees on or before the expiration date as specified by the program specific section.
- b. The program coordinator shall promptly notify qualified applicants in writing of the renewal of their certification in accordance with this section and the program specific section. Each certified applicant shall receive a document, badge or card evidencing certification, stating the applicant's name, date of certification, certification number and expiration date.
- c. The program coordinator may deny renewal of certification for any of the reasons stated in subsection E(3)(c). The program coordinator shall promptly notify, in writing, each applicant denied renewal of certification, the reasons for the denial of renewal of certification and the right of the applicant to a hearing, pursuant to subsection G(4)(d).
- d. An applicant is entitled to a hearing, on the decision to deny renewal of certification if a written request for a hearing is received by the program 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. The provisions of subsections H(10) through H(23), H(25) and H(27) apply regarding procedures for hearing and appeal.

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

### **1. Complaint.**

- a. All judicial officers and court employees shall, and any person may, notify the program if it appears a certificate holder has violated this section or the program specific section. The complainant shall provide the complaint in writing with sufficient specificity to warrant further investigation. The complaint shall also provide the name and telephone number of the complainant. The deputy director may authorize the program coordinator to accept a verbal complaint if the complainant is unable or unwilling to provide the complaint in writing. In addition, the deputy director may proceed with an investigation, without a written complaint, pursuant to subsection H(3)(a).
- b. A certificate holder is subject to disciplinary action if the director finds one or more the following applies to the certificate holder:
  - (1) Violation of or noncompliance with applicable laws, a court order or an order of the director, or any provision of court rules, this section or the program specific section;
  - (2) Failure to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, this section or the program specific section; or

- (3) The existence of any cause for which original certification or renewal of certification could have been refused pursuant to subsections E(3)(c) or G(4)(c) and the program specific section.
      - c. The expiration provisions described in subsection G(1) and the program specific sections do not affect the right of the director to investigate and take disciplinary action regarding the certification of a certificate holder if a complaint or investigation is pending prior to the expiration date.
      - d. The director shall dispose of a complaint by dismissal, referral to another entity with jurisdiction or imposition of one or more informal or formal sanctions, as provided by subsection H(24).
2. Initial Screening. The program coordinator shall determine if a complaint warrants further investigation and evaluation. If the program coordinator determines the complaint is outside the jurisdiction of this section, the program specific section and the laws applicable to the program, the program coordinator shall recommend to the deputy director the complaint be dismissed. The director, deputy director or program coordinator may refer the complaint to another state agency or entity with jurisdiction, if appropriate.
3. Preliminary Investigation and Recommendation.
  - a. Preliminary Investigation. The deputy director, upon the deputy director's own initiative, or upon receiving a complaint, may direct the program coordinator and program staff to conduct an investigation of the complaint to determine if a certificate holder has violated Arizona law, this section, or the program specific section; or for the purpose of securing information useful in the lawful administration of the law, this section, or the program specific section. An investigation is not a prerequisite to disciplinary proceedings under this section if probable cause can be determined without an investigation.
  - b. Conducting the Investigation. The deputy director shall direct the program coordinator and program staff to conduct all investigations promptly, discreetly and confidentially; and may designate one or more persons of appropriate competence to serve as investigators to assist in the investigation.
  - c. Response from Certificate Holder. The program coordinator or program staff shall send the complaint 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 program coordinator, program staff, deputy director and director shall not proceed with disciplinary action without providing the certificate holder the complaint and the opportunity to respond.

Failure by the certificate holder to respond shall not prevent the program coordinator, program staff, deputy director or director from proceeding with an investigation and disciplinary action.

- d. Preparation of Staff Recommendations. Upon completion of the preliminary investigation, the program coordinator and program staff shall prepare a written case summary of the investigation results for review by the probable cause panelist. The summary shall include staff recommendations for disposition of any alleged violations.
4. Probable Cause Review. The deputy director, acting in the capacity of a probable cause panelist, shall review the written case summary. The deputy director may agree or disagree with the recommendations contained in the written case summary and may do one or more of the following:
    - a. Direct program staff to investigate further;
    - b. Recommend the director refer the complaint to another entity with jurisdiction;
    - c. Determine probable cause does not exist that the certificate holder has committed misconduct and recommend the director dismiss the complaint. The deputy director shall direct program staff to prepare a notice of dismissal and forward the notice of dismissal to the director within the time frames specified by subsection H(6);
    - d. Direct the program coordinator to send an advisory letter to the certificate holder;
    - e. Make a determination of probable cause that misconduct by the certificate holder has occurred and recommend to the director:
      - (1) The complaint is appropriate for resolution through informal disciplinary proceedings pursuant to subsection H(8);
      - (2) The alleged violations constitute formal charges and direct staff prepare the notice of right to hearing and proceed as provided in subsection H(9); or
      - (3) The alleged violations constitute formal charges and require emergency summary suspension action pursuant to subsections (H)(5) and H(9).
  5. Emergency Summary Suspension. On a determination of probable cause, if the director finds the public health, safety or welfare requires emergency action and incorporates a finding, the director shall order emergency summary suspension of a certificate holder while the formal disciplinary proceedings are pending. The director shall order program staff to institute the formal disciplinary proceedings within the time frames specified in subsection H(6). The program coordinator shall immediately serve the certificate holder with the notice of the emergency summary suspension and shall notify all applicable courts including superior court presiding judges, clerks of the superior court and superior court administrators of the emergency summary suspension.

6. Processing Time Frames. The program staff shall:
  - a. Prepare and forward a notice of dismissal to the director, within fifteen days after the determination by the deputy director there is no probable cause, unless the deputy extends the time for good cause;
  - b. File a notice of informal or formal disciplinary proceedings no later than 60 days from the date of determination of probable cause, unless the deputy director extends the time for good cause;
  - c. File a notice of formal disciplinary proceedings no later than 30 days from the date of an order of emergency summary suspension pursuant to subsection H(5); and
  - d. Process complaints timely, with the goal of processing 98 per cent of all complaints within 22 months from date of receipt to final decision by the director.
7. Confidentiality of Complaints. The director, deputy director, program coordinator, program staff and court employees shall keep information or documents obtained or generated by the director, deputy director, program coordinator or court employees in the course of an open investigation or received in an initial report of misconduct confidential, except as mandated by court rules or by this section.
  - a. Confidential information may also be disclosed during the course of an open investigation:
    - (1) To court staff, the attorney general, county attorney, law enforcement and regulatory officials; or
    - (2) If the director makes a finding the disclosure is in the best interest of the public and the interest is not outweighed by any other interests or is not contrary to law.
  - b. Once probable cause is determined all information and documents are open unless:
    - (1) Confidential by law or public record rules adopted by the supreme court; or
    - (2) If the deputy director, as probable cause panelist, determines further investigation is necessary, the information or documents involved in the further investigation shall remain confidential.
8. Informal Disciplinary Proceedings.
  - a. Commencement. On a finding of probable cause by the deputy director, the director may commence informal disciplinary proceedings if the director finds the complaint is appropriate for resolution through informal disciplinary proceedings.

b. Decision of the Director. On review of the recommendation of the deputy director, the director may resolve the complaint through informal disciplinary proceedings and impose an informal sanction pursuant to subsection H(24) or may take other action pursuant to this section. The provisions of subsection H(25) apply to the decision and order of the director. Informal disciplinary proceedings:

- (1) Do not provide the certificate holder the right to a hearing;
- (2) May result in the informal sanction of a letter of concern. A letter of concern may be imposed in combination with an advisory letter or with other sanctions imposed pursuant to formal disciplinary proceedings;
- (3) Are not subject to judicial review pursuant to subsection H(27); and
- (4) Are not confidential.

9. Formal Disciplinary Proceedings.

a. Commencement. The director may commence formal proceedings if the deputy director finds probable cause to believe the certificate holder has committed misconduct under this section and recommends the complaint is not appropriate for resolution through informal disciplinary proceedings. The director, upon commencement of formal proceedings, may appoint a hearing officer pursuant to subsection H(14).

b. Notice to Certificate Holder. The program coordinator shall serve the formal statement of charges on the certificate holder with a notice advising the certificate holder of the certificate holder's rights pursuant to this section. This notice shall comply with the provisions of subsection H(16).

10. Request for Hearing. An applicant for certification or renewal of certification or a certificate holder who has been served with notice of the formal statement of charges may request a hearing within fifteen days of receipt of notice. All demands for a hearing shall specify:

- a. The ACJA subsection that entitles the person to a hearing;
- b. The factual basis supporting the request for hearing; and
- c. The relief demanded.

11. Default. A person who fails to request a hearing within the time provided is in default and the program coordinator or the director may proceed with denial of the certification, denial of renewal of certification, or disciplinary proceedings.

12. Non-abatement. Unwillingness, failure of the complainant to cooperate with the program, withdrawal of a charge, settlement, compromise between the complainant and the certificate holder, or restitution by the certificate holder shall not abate the processing of any complaint.
13. Status of Complainant. The complainant is not a party to the proceeding. The complainant shall receive notice of the final decision resulting from the complaint.
14. Appointment of Hearing Officer. The director may appoint a hearing officer, knowledgeable in conducting hearings, to conduct a hearing regarding the denial of initial or renewal certification of an applicant; or alleged misconduct by a certificate holder pursuant to this section or upon written demand by a person entitled to a hearing. The director may request the presiding judge of the superior court in the county where the alleged violation took place to supply the person for appointment as the hearing officer, a hearing room and any other necessary resources.
15. Time Line for Hearing. The director or hearing officer shall ensure the hearing is held within 45 days of receipt of the request if the request is made by an applicant, unless postponed by mutual consent for good cause. If the request is from the program coordinator, the hearing officer shall ensure the hearing is held as soon as practical at the discretion of the hearing officer but no less than fifteen days after notice, as required by subsection H(16).
16. Notice of Hearing. The program coordinator shall prepare and give notice to the parties, at least fifteen days prior to the date set for hearing.
  - a. The notice shall include the following information:
    - (1) A statement of the time, place and nature of the hearing;
    - (2) A statement of the legal authority and jurisdiction for conduct of the hearing;
    - (3) A reference to the particular sections of the statutes, rules, ACJA sections and policies involved;
    - (4) A short and plain statement of the allegations or factual basis supporting the relief requested. Amendments as necessary, are permitted; and
    - (5) If the notice is for a violation or denial of certification and if the hearing date has not previously been set, a statement indicating the registrant or applicant is entitled to a hearing upon request, if a request is made in writing within fifteen days of receipt of the notice.
  - b. The program coordinator shall accomplish service of the notice by personal service or certified mail return receipt requested to the last business address of record with the program coordinator. Proof of service is made by filing with the hearing officer a verified statement service was made. Service by mail is complete upon deposit in the United States mail.

- c. If a party is represented by an attorney, the program coordinator shall make service upon the attorney.

17. Filings, Answers and Pleadings.

- a. Parties shall file answers to the notices within ten days after the date the notice is served, unless otherwise ordered by the hearing officer. Answers shall comply with 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 proceedings 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.
- b. Parties shall file all motions at least five days prior to the scheduled hearing date, unless otherwise ordered by the hearing officer.
- c. Parties shall file responses to motions within five days of the filing of the motion.
- d. Copies of all filings shall be delivered to the executive office of the AOC, hearing officer, and all parties to the proceeding.

18. Discovery.

- a. No discovery is permitted, except as provided in this 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. In order 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, the hearing officer shall issue a subpoena and written order. The subpoena and order shall identify the person to be deposed, scope of testimony to be taken, documents, if any, to be produced and the time and place of the deposition. The party requesting the deposition shall arrange for service of the subpoena and order with service on all parties five days before the time fixed for taking the deposition unless, for good cause shown, the time is shortened by the hearing officer.

19. Subpoena.

- a. For the purpose of an investigation or hearing, the director or a hearing officer may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the subject of any hearing or investigation.
- b. If a person fails to obey a subpoena served in accordance with the provisions of this section, the director or hearing officer may forward a report of the disobedience, together with a copy of the subpoena and proof of service, to the superior court and request the superior court judge issue an order requiring the appearance by a person or the production of documents, or both. The superior court may treat the failure to obey the order as contempt of court and may impose penalties as though the person had disobeyed a subpoena issued by the court.
- c. Subpoenas shall be issued and served in the same manner as provided by the Arizona Rules of Civil Procedure. An employee of the court or any other person as designated by the Arizona Rules of Civil Procedure may serve the subpoena.

20. Prehearing Conference. The hearing officer may order a pre-hearing conference at the request of any party or on the hearing officer's own initiative. The purpose of the conference is to consider 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 evidence, facts and legal conclusions not contested;
- d. To identify witnesses; and
- e. To consider any other matters to aid in the expeditious conduct of the hearing.

21. Procedure at Hearings.

- a. The hearing officer shall preside over the hearing. The hearing officer has the authority to decide all motions, conduct pre-hearing 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 and Other Persons at a Hearing. At a hearing:
  - (1) A party is entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the conduct of the proceeding.
  - (2) 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 and the program coordinator providing the name, address and telephone number of the party represented and the name, address and telephone number of the attorney. A corporate officer or principal may represent a business entity in any proceeding under this section.
  - (3) All persons appearing before a hearing officer in any proceeding shall conform to the conduct expected in the superior court.
- c. Conduct of Hearing.
  - (1) The hearing officer may conduct a hearing in an informal manner and without adherence to the rules of pleading or evidence. The hearing officer may question witnesses and shall require any evidence supporting a decision is substantial, reliable and probative and shall exclude irrelevant, immaterial or unduly repetitious evidence. There is no right to a jury. All hearings are open to the public and shall conform with the provisions of ACJA §1-202: Public Meetings. The hearing officer may close the hearing for executive session, pursuant to ACJA §1-202(C)(5).
  - (2) The hearing officer shall require 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.
  - (3) In all matters brought at the request of the program, evidence in support of the program's action is presented first and carries the burden of proof. In matters brought at the request of someone other than the program, including requests for hearing on the denial of initial certification, renewal of certification or disciplinary matters, the person seeking the hearing shall present first and carries the burden of proof.
- d. Record of Hearing.
  - (1) The hearing officer shall ensure the oral proceedings, or any part of the oral proceedings,

are electronically recorded and on request of any party are transcribed. The party making the request shall pay the cost of the transcript.

- (2) A certified court reporter shall make a full stenographic record of the proceedings if requested by a party within five days prior to a hearing and upon order of the hearing officer. The requesting party shall pay the cost of the transcript. The hearing officer may require prepayment or a monetary deposit to cover the cost of the transcript. If transcribed, the record is a part of the court's record of the hearing and any other party having a direct interest shall receive a copy of the stenographic record at the request and expense of the requesting party. If no request is made for a stenographic record, the hearing officer shall ensure the proceedings are recorded as described in subsection H(21)(d)(1).

22. Recommendations of Hearing Officer. The hearing officer shall, within 30 days of the closing of the record of a hearing, prepare written recommendations and deliver the recommendations to the director. The recommendations shall include findings of fact, based on a preponderance of the evidence and conclusions of law, separately stated.

23. 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. The requesting party shall file the written request with the hearing officer and the executive office of the AOC, within fifteen days after any order made pursuant to the hearing was mailed or delivered to the person entitled to receive the order. The hearing officer shall make the decision to grant or deny the request within 30 days of the date of filing of the request. The requesting party shall base the request for rehearing or review on 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 allow any party served with a request for rehearing to file a response within fifteen days of service.

24. 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, in addition to any sanctions specified in the program specific section, the director shall do one or more of the following:

- (1) Determine no violation exists and dismiss the complaint;
- (2) Refer the complaint to another entity with jurisdiction;
- (3) Order the program coordinator and program staff to conduct further investigation;
- (4) Direct the program coordinator to issue an advisory letter, if the director believes, as a result of information obtained during an investigation that further instances or continuation of the behavior by the certificate holder may result in future disciplinary action against the

certificate holder. The advisory letter shall remind the certificate holder of the obligations of certification or give instructions designed to assist the certificate holder in improving or modifying behaviors or procedures.

- (5) Make a finding the certificate holder has violated any of the provisions of subsection H(1)(b) and order that emergency summary suspension is necessary, pursuant to subsection H(5);
- (6) Make a finding the certificate holder has violated any of the provisions of subsection H(1)(b) and issue an order imposing any or a combination of the following informal or formal sanctions:
  - (a) Issue a letter of concern;
  - (b) Issue a censure;
  - (c) Resolve the violation by consent order or other negotiated settlement between the parties;
  - (d) Place restrictions on a certificate with specified conditions;
  - (e) Place the certificate holder on probation for a specified period of time;
  - (f) Mandate additional training for the certificate holder;
  - (g) Issue cease and desist orders;
  - (h) Order suspension of certification;
  - (i) Order revocation of certification;
  - (j) Assess costs associated with these activities; or
  - (k) Impose civil penalties associated with these activities.

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

- (1) An advisory letter is not a form of discipline, is not an informal or formal sanction; is not appealable and is confidential. A certificate holder may file a response with the director within fifteen days after receipt of an advisory letter.
- (2) An informal disciplinary proceeding may result in imposition of sanctions, but the sanction may not be a censure, restrictions on a certificate, probation, suspension or revocation of the certificate;
- (3) A letter of concern is an informal sanction;
- (4) Sanctions resulting from informal disciplinary proceedings are not appealable and are not confidential;
- (5) Informal discipline may be imposed in combination with formal discipline; and
- (6) The program coordinator shall provide written notice of the action by the director to the complainant, certificate holder and the parties, as applicable, pursuant to subsections H(24) and H(25).

25. Decisions and Orders. The director shall make the final decision or order in writing and shall include findings of fact and conclusions of law, separately stated. The director shall make findings of fact by a preponderance of the evidence, based exclusively on the evidence and on matters

officially noticed. The program coordinator shall notify the parties personally, in writing, by mail to their last known address of any decision or order.

26. Procedure after Suspension or Revocation.

- a. Upon suspension or revocation of a certificate the director shall timely serve notice upon the certificate holder either in person or in writing, by certified mail, return receipt requested, addressed to the last address on record with the program. Notice by mail is complete upon deposit in the United States mail.
- b. The director or program coordinator shall not again issue any certification under this section to any person whose certification has been revoked until after expiration of one year from date of revocation; and until the person again qualifies in accordance with the applicable provisions of this section and the program specific section.

27. Judicial Review. Decisions of the director pursuant to this section and the program specific section are final. Parties may seek judicial review through a petition for a special action pursuant to the Arizona Rules of Procedure for Special Actions.