

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
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ARIZONA CODE OF JUDICIAL ) Administrative Order  
ADMINISTRATION § 7-201: ) No. 2006- 70  
GENERAL REQUIREMENTS )  
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WHEREAS on June 19, 2006 the Arizona Judicial Council approved and recommended the attached amended version of § 7-201 for adoption, and

WHEREAS a January 1, 2007 general effective date is advisable, and

WHEREAS new members for the Confidential Intermediary, Defensive Driving, and Fiduciary Boards must be appointed and trained before they begin service, and

WHEREAS confidentiality that applied to certain dismissed complaints pursuant to §§ 7-206 and 7-208 is removed by § 7-201 as amended, and considering the expectations of confidentiality of certificate holders whose dismissed complaints were confidential prior to these amendments, it is advisable to make the changes in confidentiality effective for complaints dismissed after the effective date of the amended provisions.

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

IT IS ORDERED that the Arizona Code of Judicial Administration § 7-201 is amended as indicated in the attached document effective January 1, 2007 except as otherwise specified in other administrative orders amending Chapter 7 of the Arizona Code of Judicial Administration entered on the date of this order.

IT IS FURTHER ORDERED that members of the Confidential Intermediary, Defensive Driving, and Fiduciary Boards (“Boards”) shall be appointed and receive training regarding the provisions of § 7-201 and the section of the Arizona Code of Judicial Administration applicable to each Board, as amended, before the January 1, 2007 effective date of their service on their respective Board.

IT IS FURTHER ORDERED that applicants are subject to the initial certification requirements in effect on the date the application is filed except as otherwise specified in other administrative orders amending Chapter 7 of the Arizona Code of Judicial Administration entered on the date of this Order.

IT IS FURTHER ORDERED that, to the extent permitted by law, complaint, discipline, and certification procedures contained in § 7-201, as amended, shall apply to all matters pending on or received after January 1, 2007.

IT IS FURTHER ORDERED that complaints dismissed on or before December 31, 2006 shall remain confidential as provided by the provisions in effect at the time of dismissal.

Dated this 6th day of September, 2006.

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RUTH V. MCGREGOR  
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.** In this section, unless otherwise specified, 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 specific section” means the adopted section of the Arizona Code of Judicial Administration (ACJA) applicable to a specified profession or occupation governed by this section, specifically, § 7-202: Fiduciaries; § 7-203: Confidential Intermediary; § 7-205: Defensive Driving Schools and Instructors; § 7-206: Certified Reporters and § 7-208: Legal Document Preparers.

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

“Advice” or “Advisory letter” means written communication from the board notifying reminding 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. 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 a written formal discipline sanction, statement of displeasure identifying finding a certificate holder has violated a one or more provisions of the statutes, court rules, or applicable sections of the Arizona Code of Judicial Administration (ACJA) or statutes.

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

“Certification” means a process conducted by a board to determine if certificate issued by the program coordinator to a person or entity when the person or entity has met meets all requirements for certification to practice in the profession or occupation, pursuant to statutes, court rules and 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.

“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 adult

education courses.

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

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

“Corrective action plan” means the measures outlined and agreed upon by division staff and the certificate holder to correct all deficiencies after a compliance audit or defensive driving course monitoring is completed.

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

“Designated principal” means an active certificate holder of a business or public entity who is designated specific responsibilities pursuant to the applicable sections of the ACJA.

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

“Disciplinary clerk” means the individual or the individual’s designee of the certification and licensing division designated to accept all filings relevant to denial of initial or renewal certification of applicants and discipline of certificate holders.

“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 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 acts of misconduct or violations of statutes, court rules, or the applicable sections of the ACJA.

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

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

“Expired” means the certificate of a certificate holder has lapsed on the a 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.~~

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

“Formal statement of charges” means the document setting forth specific alleged acts of misconduct or violations by a certificate holder of statutes, court rules, or the applicable sections of the ACJA, including any amendments, authorized by the board, upon a determination of probable cause.

“Formal disciplinary proceedings” means the process initiated upon a ~~determination~~ finding of probable cause, ~~where a document is served on a certificate holder setting forth specific the~~ alleged acts of ~~alleged~~ misconduct or violations of the statutes, court rules, or the applicable sections of the ACJA by ~~a the~~ a certificate holder, ~~and notifying the certificate holder of the intent to seek disciplinary action and the certificate holder’s right to request a hearing 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)(24)(a)(6).

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

“Hearing officer” means an individual appointed by the supreme court to preside over administrative hearings 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 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.

“Informal disciplinary proceedings” means the process initiated ~~when~~ upon a determination of ~~probable cause is made that~~ the alleged acts of misconduct or violations of the statutes, court rules, or applicable sections of the ACJA by ~~the a~~ a certificate holder, ~~that if true, does not~~ would warrant ~~the filing of formal charges.~~ a letter of concern, pursuant to subsection (H)(24)(a)(6)(a).

“Injury” means harm to a client, customer, the public, judicial or legal system, 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 communication stating finding a certificate holder has violated ~~a one or more provisions of the applicable sections or statutes,~~ a one or more provisions of the applicable sections or statutes, ~~and a finding by the director informal discipline is appropriate.~~ court rules, or the applicable

sections of the ACJA.

“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.

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

“Probation” means a written formal discipline sanction that allows finding a certificate holder has violated one or more provisions of the statutes, court rules, or applicable sections of the ACJA but allowing the certificate holder to practice in their profession or occupation under specified conditions for a set period of time.

“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.

~~“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 written formal discipline sanction certificate is terminated as a result of disciplinary action, after a finding of probable cause pursuant to formal disciplinary proceedings. finding a certificate holder has violated one or more provisions of the statutes, court rules, or applicable sections of the ACJA and the certificate to practice in the profession or occupation is rescinded.

“Sanction” means an explicit and official action ~~by the director~~ resulting from an informal or formal disciplinary action finding a certificate holder’s has violated or failed to comply with one or more of the statutes laws, court rules, applicable sections of the ACJA sections, or court orders or board orders relevant to the certificate holder’s profession or occupation.

“Section” means the referenced provision of the ACJA.

“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 applicable sections of the ACJA certificate is not revoked, but and 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 disciplinary action by the director.

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

“Voluntary surrender resignation” means ~~a process where~~ a certificate holder voluntarily decides to discontinue practice in the specified profession or occupation and surrenders returns their the certificate ~~to practice~~ to the board for review and acceptance pursuant to subsection (E)(7).

**B. Applicability.** This section is read together with the ACJA program specific section applying to the applicant’s or certificate holder’s profession, ~~or occupation or authorized services.~~ In the event of any conflicts between this section and the ACJA program specific section specific to a profession, occupation or authorized services, the ~~program specific~~ ACJA section shall govern. Reference to “these sections” refers to ACJA § 7-201: General Requirements and the applicable sections of ACJA program specific sections. ACJA § 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; certification of reporters pursuant to A.R.S. § 32-4001 and ACJA § 7-206; and certification of legal document preparers pursuant to Rule 31, Rules of the Supreme Court and ACJA § 7-208.

**C. Purpose.** This section specifies the application, certification and renewal of certification process, and the complaint, and disciplinary process and hearing process for the certification programs. The primary purpose of the certification and discipline processes is protection of the public. In addition, the certification programs ensure compliance to the highest ethical standards, rehabilitation of the certificate holder and deterrence of further unprofessional conduct pursuant to subsection (H)(6)(k), in accordance with statutes, court rules and ACJA.

**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), § 32-4005(A) and Rule 31(a)(23), Rules of the Supreme Court,~~ the supreme court is responsible for administering the Confidential Intermediary Program, Fiduciary Program, ~~and D~~efensive Driving Program, certified reporter program and legal document preparer program. The supreme court shall:
  - a. Adopt rules for the implementation and administration of all certification programs including minimum qualifications, certification and disciplinary processes and a code of conduct.
  - b. Establish and collect fees, costs and fines necessary for the implementation and enforcement of all certification programs.
2. Role and Responsibilities of the Director. The director as designated by the Az. Const. Art.

6 § 7:

a. Shall:

- ~~(1) Develop application and renewal forms, training, certification examinations and policies and procedures in conformity with this section and the applicable sections of ACJA including program specific sections, §§ 7-202, -203, and -205, -206 and -208;~~
- ~~(2) Appoint and supervise all division staff;~~
- ~~(3) Approve or disapprove all budgetary matters;~~
- ~~(4) The director is responsible for enforcement~~ Ensure implementation of the applicable laws, this section and the applicable sections 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.~~
- ~~(5) Develop policies and procedures regarding review of credit reports;~~
- ~~(6) Develop policies and procedures governing any complaint initiated by the director;~~  
and
- ~~(7) Develop time frames for the processing of certification applications by division staff.~~

b. ~~Has the authority to approve or disapprove matters of administration of each program.~~

b. May:

- ~~e.(1) a~~ Appoint and develop administrative guidelines for an ethics advisory committees to issue nonbinding ethical advisory opinions; make recommendations on any matter and may develop guidelines for the appointment, term of appointment of committee members and meeting requirements.
- ~~d.(2) Shall resolve complaints alleging~~ Direct division staff to conduct an investigation into alleged acts of misconduct or violations by a certificate holders and may take any of the actions specified in pursuant to subsection (H)(24)(1)(b);-
- ~~(3) Initiate a complaint pursuant to subsection (H)(1)(b)(4)(b); and~~
- ~~e.(4) May,~~ Ppursuant to the applicable sections of the ACJA, administrative orders and A.R.S. §§ 28-3399 and 41-2401(D)(8), initiate an a compliance 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:

- (a) Timeframes. The director shall develop timeframes and procedures for division staff conducting compliance audits.

- (1)(b) Confidentiality.
- (a)(i) Working papers associated with the compliance audit ~~or the review~~ of files maintained by ~~the programs~~ division staff 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, public regulatory entities or law enforcement agencies.
- (b)(ii) Upon completion of an audit ~~or review~~ the final report issued to the affected party is a public record subject to public inspection.
- (2)(c) Subpoena. The director may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the audit ~~or review~~.
- (3)(d) Referral. ~~Where appropriate,~~ The director may refer the audited ~~or reviewed~~ certificate holder to an applicable agency or division staff for investigation of alleged acts of misconduct or violations of the statutes, court rules, this section or the applicable sections of the ACJA. If the director refers the audited certificate holder to division staff for investigation of allegations of acts of misconduct or violations, the division staff shall process the complaint pursuant to subsection (H) by a pertinent agency, including investigation by the program specific to the certificate holder's profession or occupation.
- (4)(e) 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 a the person or business, 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~~ evaluator, to review the recommendations of staff regarding a ~~complaint alleging misconduct by a certificate holder~~, pursuant to subsection (H)(4)(5)(a);
- b. Review ~~May, on the deputy director's own initiative, direct staff to initiate an investigation summary of a complaint prepared by division staff 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.~~ Determine if there is probable cause to believe a certificate holder has committed acts of misconduct or violations of the statutes, court rules, or the applicable sections of the ACJA.

4. Role and Responsibilities of Division Staff ~~the program coordinator~~. The director shall designate the division director and other division staff to assist in the administration of all

certification programs pursuant to the Az. Const. Art 6, § 7. a program coordinator. The program coordinator Division staff shall administer the all certification programs in compliance with applicable statutes, court rules, administrative orders, this section and the program specific section.

a. Role and Responsibilities of the Division Director. The division director may:

- (1) Issue subpoenas in the investigation process pursuant to subsection (H)(1)(h);
- (2) Dismiss complaints where the supreme court has no jurisdiction pursuant to subsection (H)(2)(b)(2);
- (3) Dismiss clearly insufficient complaints pursuant to subsection (H)(2)(b)(3); and
- (4) Refer complaints to another state agency or entity with jurisdiction, if appropriate, pursuant to subsection (H)(2)(b)(4).

b. Division staff shall:

- (1) Submit completed applicant fingerprint cards and applicable fees to the Arizona Department of Public Safety, in accordance with A.R.S. § 41-1750 and Public Law 92-544, pursuant to subsection (E)(1)(d)(3);
- (2) Make recommendations to the board on all matters of applications and certification and any other matters regarding applicants and certificate holders;
- (3) Provide updates to the board on program activities;
- (4) Maintain a list of certificate holders and post the list on the applicable Website and make the list available to the public;
- (5) Conduct investigations of allegations of acts of misconduct or violations of the statutes, court rules, or the applicable sections of the ACJA by applicants, certificate holders or non-certificate holders and report the findings to the board; and
- (6) Conduct compliance audits and monitoring as required by this section or the applicable sections of the ACJA.

## 5. Role and Responsibilities of Professional and Occupational Boards.

a. Establishment. The supreme court shall establish a board for each profession or occupation regulated by the supreme court pursuant to this section and the applicable ACJA section.

b. Appointment of members. Upon establishment of a board, the chief justice shall appoint members to initial varying terms of one, two and three years to encourage continuity of the board. Thereafter, all terms are for three years, unless otherwise noted in the applicable ACJA section. The chief justice shall appoint the chair of each board who shall serve as chair no longer than three years, unless otherwise specified in the applicable ACJA section. If a vacancy occurs in a board member position, the chief justice shall fill the vacancy expeditiously in the manner provided for in the original appointment. The appointments shall provide geographical, gender and ethnic diversity and consist of members of the regulated profession or occupation, court staff, the public and other professionals pursuant to

the applicable ACJA section. The chief justice may appoint members to serve successive terms. The members shall assist division staff in the recruitment of board members and in the recommendation to the chief justice regarding appointment of candidates to the board.

c. Duties of the Board.

(1) The board shall:

- (a) Make recommendations to the supreme court regarding rules, policies and procedures for regulation of the profession or occupation, including:
  - (i) applicant qualifications;
  - (ii) applicant testing;
  - (iii) fees;
  - (iv) a code of conduct;
  - (v) continuing education; and
  - (vi) any other matter pertaining to the regulated profession.
- (b) Establish a passing score on any examination used for certification purposes, other than a national validated examination;
- (c) Make all decisions regarding requests for special consideration to sit for subsequent examinations pursuant to subsection (E)(1)(f)(2)(d)(ii) and (iii);
- (d) Make all decisions regarding whether to certify applicants for initial or renewal of certification;
- (e) Review the division director's dismissal of a complaint, pursuant to subsection (H)(2)(d);
- (f) Review the probable cause evaluator's finding pursuant to subsection (H)(5)(a) and make a decision to:
  - (i) Request division staff to conduct further investigation;
  - (ii) Refer the complaint to another entity with jurisdiction;
  - (iii) Determine no violation exists and dismiss the complaint with or without prejudice, pursuant to subsection (H)(24)(a)(3);
  - (iv) Order the preparation of documents necessary for informal or formal disciplinary actions pursuant to subsection (H)(7)(b), (H)(8)(b) or (H)(9)(b);  
or
  - (v) Order an immediate emergency suspension of a certificate and set a date for an expedited hearing, if the public health, safety or welfare are at risk, pursuant to subsection (H)(9)(d)(1); and
- (g) Make all final decisions regarding alleged acts of misconduct or violations of the statutes, court rules, or applicable sections of the ACJA by applicants, certificate holders or noncertificate holders pursuant to subsections (H)(24) and (H)(25). The board has the final decision on the disposition of a complaint and may take any action pursuant to subsection (H)(24), regardless of the recommendations of the division director or hearing officer.

(2) The board may:

- (a) Hold informal interviews of applicants regarding initial certification and issue

subpoenas for witnesses and documentary evidence, pursuant to subsection (E)(1)(a)(10);

(b) Hold informal interviews of certificate holders regarding renewal of certification and issue subpoenas for witnesses and documentary evidence, pursuant to subsection (G)(1)(b);

(c) Request additional investigation of a complaint dismissed by the division director, pursuant to subsection (H)(2)(d)(2);

(d) Hold formal interviews of certificate holders regarding disciplinary matters, whether any discipline is eventually imposed or not, and issue subpoenas for witnesses and documentary evidence, pursuant to subsection (H)(8); and

(e) Make procedural determinations to consolidate or sever any discipline matter.

d. The board shall follow the policies and procedures in subsection (I).

e. Persons appointed by the supreme court to serve on boards are immune from civil liability for good faith conduct relating to their official duties.

5. 6. Computation of Time. For the purposes of this section and the program ACJA specific 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 11 days, intermediate Saturdays, Sundays and legal holidays shall ~~are~~ not be included in the computation. When that period of time is ~~and if~~ 11 days or more, intermediate Saturdays, Sundays and legal holidays shall be ~~are~~ 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.

## **E. Initial Certification.**

~~1. Eligibility for Application. Any applicant, who meets the required eligibility for certification, as specified in this section and the program specific section, may apply for certification.~~

1. 2. Application for Initial Certification.

a. Forms. An applicant shall apply for certification on approved forms and file them with provided by the division staff program. ~~The applicant shall sign the completed application, have it duly verified under oath and file it with the program.~~

(1) Division staff shall conduct a preliminary review of the submitted application and determine if the application is deficient, the required supporting documents are deficient, fees are deficient, or a combination of these requirements are deficient.

- (2) Division staff shall advise the applicant in writing of the deficiencies.
  - (3) The applicant shall provide the information and a written response to correct or explain the deficiencies, or otherwise remedy the defects in the application, supporting documents or fees.
  - (4) Division staff may require the applicant to provide additional information or an explanation reasonably necessary to determine if the applicant meets the required qualifications specified in this section or the applicable sections of the ACJA.
  - (5) Upon receipt of a complete application, division staff may conduct a personal credit review and review records regarding an application for initial certification, consistent with the policies and procedures developed by the director pursuant to subsection (D)(2)(a)(5).
  - (6) The applicant shall notify division staff of any changes relevant to the application for certification within five days of the change.
  - (7) Upon a final review of the application, division staff shall prepare and forward to the board a written recommendation regarding the applicant's qualifications and eligibility for certification.
  - (8) Division staff shall advise the board in any written recommendation regarding certification of an applicant, of any complaints alleging acts of misconduct or violations of statute, court rules or order, this section, or the applicable sections of the ACJA, if the allegations occurred during the time the applicant held an active certificate and were received after the applicant's certificate expired.
  - (9) The division staff's written recommendation to the board shall note any deficiencies in the application. A deficient application for initial certification is lacking one or more of the following requirements:
    - (a) An explanation or correction of any deficiencies, pursuant to subsection (E)(1)(a)(4);
    - (b) Payment of all appropriate fees, pursuant to subsection (E)(1)(b);
    - (c) A photograph, pursuant to subsection (E)(1)(c); or
    - (d) A readable fingerprint card or affidavit in lieu of a fingerprint card, pursuant to subsection (E)(1)(d).
  - (10) The board, upon review of the division staff recommendation, may request an informal interview with an applicant for certification, pursuant to subsection (D)(5)(c)(2)(a), to establish if:
    - (a) Additional information is needed to determine if the applicant meets all qualifications for certification in this section and the applicable section of the ACJA;
    - (b) An explanation of the information provided by the applicant is needed to determine if the applicant meets all qualifications for certification in this section and the applicable section of the ACJA; or
    - (c) Any complaints, regarding allegations of misconduct or violations of the statutes, court rules or applicable sections of the ACJA, received after the applicant's original certificate expired, require investigation by division staff pursuant to subsection (E)(1)(a)(4).
- b. Fees. ~~The program applicant shall collect in advance the~~ submit, with the application, any applicable certification, examination and training fees specified in the program

~~specific applicable sections of the ACJA. Section. The Fees are not refundable or waivable. An applicant shall make the payment for any fee payable to the Arizona Supreme Court, AOC. An application submitted without fees is deficient.~~

c. Photograph. The applicant for certification shall provide with the application, one color passport-size photograph, two inches by two inches of the applicant's head, neck and shoulders only. The applicant shall ensure the photograph was taken within the last two years and clearly identifies the applicant. An application submitted without a photograph is deficient.

e. d. Fingerprinting. If required pursuant to law, ~~by the program specific section, pursuant to law,~~ the applicant shall submit with the application, 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. An application submitted without a fingerprint card, if required by law, is deficient.

(1) The applicant shall provide ~~the program with~~ a readable and complete 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~~ If after two attempts, the FBI determines the fingerprints provided are not readable, the applicant shall require the applicant, if definitive fingerprints are not obtainable, to make submit 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) (3) ~~The program~~ Division staff shall submit completed applicant fingerprint cards and the applicable fees to the Arizona Department of Public Safety, ~~in accordance with~~ pursuant to A.R.S. § 41-1750, ~~and~~ Public Law 92-544 and subsection (D)(4)(b)(1).

~~d.e.~~ Initial Training. If required by the applicable section of the ACJA ~~program specific section,~~ an applicant shall attend and complete the initial training session. ~~The program coordinator~~ Division staff shall provide the applicant with a document signifying the applicant completed the training. If required by the applicable section of the ACJA, ~~program specific section,~~ an applicant shall attend the entire training session for

eligibility to sit for a certification examination.

~~e.f.~~ Examination. If required by the applicable section of the ACJA, program-specific section, an applicant shall take and pass the examination for initial certification. Specific examination requirements are located in subsection (E) of the applicable ACJA section. National examinations shall be at the time and place scheduled by the administering entity.

(1) Administration of the Initial Examination. In administering the examination, division staff ~~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 applicable section of the ACJA program-specific section;
- ~~(b)~~ Establish a passing grade on the examination and announce this prior to administering the test;
- ~~(b)~~ Set a date and place for the examination;
- ~~(c)~~ Promptly notify qualified applicants in writing they are permitted to sit for the examination, specifying the time and place of such examination;
- ~~(d)~~ Publish in advance of the examination, content specifications for the examination and a study guide, as approved by the applicable board and make the specifications and study guide available to applicants;
- ~~(e)~~ Announce, in advance of the examination, the passing score for the examination, as established by the applicable board. The passing score shall be consistent with the job analysis conducted at the direction of the board. An applicant shall pass with a final score on the examination meeting the guidelines established by the board;
- ~~(e)~~ (f) Use multiple versions of the test examination and ensure no copies of the test examination are released to applicants or the public;
- ~~(d)~~ (g) 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 to meet all qualifications for certification; and
- ~~(e)~~ (h) 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~~ Division staff shall allow an applicant who fails the first examination to:

- (a) Review the ~~examination papers, answer sheet~~ and grades of the applicant, upon written request. The applicant shall conduct the review during business hours in the presence of program division staff and the applicant shall not copy materials provided for ~~the~~ review.
- (b) Retake the examination ~~one~~ two times under the following conditions:
  - (i) The applicant is not otherwise disqualified from retaking the examination;
  - (ii) The applicant sent a written request to retake the examination to ~~the program coordinator~~ division staff within 30 days of the date of the ~~receipt~~

- notice of the examination results; and
- (iii) The applicant files a new application and pays the applicable examination fee each time;
  - (iv)(iii) The applicant takes the second or third reexamination within 90 days of the date of the notice of the examination results- indicating the applicant failed either the first or second examination; and
  - (v) An applicant who does not submit a written request to retake the examination within the 30 day time frame specified in subsection (E)(1)(f)(2)(b)(ii), may request an extension of time from the board upon a showing of good cause.
- (c) An applicant taking and failing the examination three times, unless otherwise noted in the applicable ACJA section, shall not be permitted to take any subsequent examination unless granted permission by the board.
- (d) Subsequent Examinations.
- (i) Any applicant who was unsuccessful on the third attempt to pass the examination may request the board for permission to sit for a fourth examination. The applicant shall submit a written request to the board to sit for a fourth examination under the following conditions:
    - a) The applicant has filed a new application with division staff and paid the appropriate examination fee;
    - b) The applicant is not otherwise disqualified from taking the subsequent examination;
    - c) The applicant has provided documentation attached to the new application stating the additional study and preparation the applicant has made to qualify for a fourth examination; and
    - d) The applicant has provided documentation attached to the new application demonstrating the circumstances and reasons for believing the applicant now possesses the knowledge of the minimum competencies of the profession or occupation to pass the fourth examination.
  - (ii) If the board finds the applicant demonstrates additional study and preparation and the circumstances and reasons to believe the applicant now possesses the knowledge of the minimum competencies of the profession or occupation, the board may, pursuant to subsection (D)(5)(c)(1)(c), approve the applicant's request to sit for the fourth examination. Division staff shall inform the applicant of the board's decision to allow the applicant to sit for the fourth examination within ten days of the board's decision. The notice shall state the earliest date for which the applicant may sit for the fourth examination.
  - (iii) If the board finds the applicant does not demonstrate additional study and preparation and the circumstances and reasons to believe the applicant now possesses the knowledge of the minimum competencies of the profession or occupation, the board shall, pursuant to subsection (D)(5)(c)(1)(c), deny the applicant's request to sit for the fourth examination. Division staff shall inform the applicant of the board's decision to deny the applicant's request to

sit for the fourth examination within ten days of the board's decision. The notice shall state the reasons for the board's denial. The decision by the board to deny the request is final and there is no right to a hearing.

(iv) If the applicant's request to sit for the fourth examination is denied, the applicant may file a new application twelve months after the board's decision to deny.

(v) An applicant who was unsuccessful on the fourth or any subsequent examinations may request permission from the board to sit for a subsequent examination pursuant to subsection (E)(1)(f)(2)(d).

~~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.~~

g. An applicant is disqualified from taking any future examination if the board determines the applicant engaged in fraud, dishonesty or corruption while taking the examination or any subsequent examination.

h. Updating of Examinations. Division staff shall update examinations as needed and may ask representatives from the court community, regulated profession or occupation, the public, or any other knowledgeable resource to assist in the development and validation of examinations for the applicable sections of the ACJA.

## 2. 3. Decision Regarding Certification.

a. Notification of Certification. Upon the board's decision to issue a certificate, The program coordinator division staff shall promptly certify and notify qualified applicants of certification in writing, in accordance with pursuant to this section and the applicable section of the ACJA 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 applicable section of the ACJA program specific section. In addition, unless previously provided, each applicant granted certification shall receive a copy of this section and the applicable section of the ACJA 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 board~~ 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 this section or the applicable section of the ACJA; ~~program specific section~~ or has not submitted a complete application with all deficiencies corrected, the applicable documents and fees.
- (2) ~~The program coordinator board~~ 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 on the part of the applicant 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) ~~The applicant or an officer, director, partner, member, trustee, or manager of the applicant:~~
    - (i) Has committed material misrepresentation, omission, fraud, dishonesty, or corruption in the application form;
    - (ii) ~~A record of~~ Has committed 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;
    - (iii) ~~A record of~~ Has 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;~~
    - (iv) ~~The applicant or an officer, director, partner, member, trustee, or manager of the applicant has a record of~~ Has a conviction by final judgment of a felony, regardless of whether civil rights have been restored;
    - (v) ~~A record of~~ Has a 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~~ if the crime that has a reasonable relationship to the practice of the certified profession or occupation, regardless of whether civil rights have been restored;
    - (vi) ~~Has a~~ Denial, revocation, suspension or any disciplinary action ~~of any professional or occupational license or certificate of the applicant or an officer, director, partner, member, trustee, or manager of the applicant;~~ ensure
    - (vii) Has a censure, probation or any other disciplinary action of any professional or occupational license or certificate by other licensing or regulatory entities if the underlying conduct is relevant to the certification sought;
    - (viii) Has a termination, suspension, probation or any other disciplinary action regarding past employment if the underlying conduct is relevant to the certification sought;
    - (ix) ~~The applicant or an officer, director, partner, member, trustee or manager~~

of the applicant ~~h~~Has been found civilly liable in an action involving misrepresentation, material omission, fraud, misappropriation, theft or conversion;

- ~~(i)~~ (x) The applicant or an officer, director, partner, member, trustee, or manager of the applicant ~~is~~ currently on probation, or parole, ~~or named in an outstanding arrest warrant of any court;~~
- ~~(j)~~ (xi) The applicant or an officer, director, partner, member, trustee, or manager of the applicant ~~h~~Has violated any decision, order, or rule issued by a professional regulatory entity; profession's or occupation's certification program;
- ~~(k)~~ (xii) The applicant or an officer, director, partner, member, trustee, or manager of the applicant ~~h~~Has violated any order of a court, judicial officer, ~~or~~ administrative tribunal, or the board;
- ~~(l)~~ (xiii) The applicant or an officer, director, partner, member, trustee, or manager of the applicant ~~h~~Has made a false or misleading statement or verification in support of an application for a certificate filed by another person;
- ~~(m)~~ (xiv) The applicant or an officer, director, partner, member, trustee, or manager of the applicant ~~h~~Has made a false or misleading oral or written statement to the program division staff or the board;
  - (xv) Failed to disclose information on the certification application subsequently revealed through the background check;
- ~~(n)~~ (xvi) The applicant or an officer, director, partner, member, trustee, or manager of the applicant ~~has f~~Failed to respond or furnish information to the program division staff or the board when the information is legally requested ~~by the program~~ and is in the certificate holder's applicant's control; or is reasonably available to the applicant and pertains to certification or investigative inquiries;
  - or
- ~~(o)~~ (xvii) 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 board may 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)(2)(c)(2)(b)(iv) and (v):

- (a) The applicant's age at the time of the conviction;
- (b) The applicant's experience and general level of sophistication at the time of the pertinent conduct and conviction;
- (c) The degree of violence, injury or property damage and the cumulative effect of the conduct;
- (d) The applicant's level of disregard of ethical or professional obligations;
- (e) The reliability of the information regarding the conduct;
- (f) If the offenses involved fraud, deceit or dishonesty on the part of the applicant resulting in harm to others;

- (g) The recency of the conviction;
  - (h) Any evidence of rehabilitation or positive social contributions since the conviction occurred as offered by the applicant;
  - (i) The relationship of the conviction to the purpose of certification;
  - (j) The relationship of the conviction to the applicant's field of certification;
  - (k) The applicant's candor during the application process;
  - (l) The significance of any omissions or misrepresentation during the application process; and
  - (m) The applicant's overall qualifications for certification separate from the conviction.
- (4) ~~(3)~~ Upon the board's decision to deny certification, The program coordinator division staff 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)(32)(c)(45). The division staff shall provide the notice in writing and shall send the notice within ten days after the board's decision.
- (5) ~~(4)~~ An applicant is entitled to a hearing; on the decision to deny certification, if the disciplinary clerk receives a written request for a hearing is received by the program within fifteen days after receipt of division staff mails the notice of the denial. The applicant is the moving party at the hearing and has the burden of proof. The provisions of subsections (H)(12) through (H)(23), and (H)(25) and through (H)(27) apply regarding procedures for the hearing and appeal.
- (6) An applicant denied certification by a final decision of the board, whether or not a hearing was requested and held, may reapply for certification, pursuant to subsection (E), under the following circumstances:
- (a) It has been twelve months since the final decision by the board;
  - (b) If the initial reasons for denial were failure to meet the education and experience requirements, the applicant shall attach to the new application written documentation demonstrating how the circumstances have changed to meet these requirements:
    - (i) Division staff shall review the new application and supporting documentation and consider if the applicant now meets the education and experience requirements;
    - (ii) Division staff shall notify the applicant in writing within ten days if the applicant has now provided sufficient documentation to demonstrate the applicant meets the education and experience requirements pursuant to this section and the applicable ACJA sections or has not provided sufficient documentation to demonstrate the applicant now meets the education and experience requirements;
    - (iii) If the applicant has met the education and experience requirements necessary for certification, division staff shall forward the application to the board pursuant to subsection (E)(1)(a)(7);
    - (iv) If the applicant has not met the education and experience requirements necessary for certification, division staff shall forward the application to the board noting the deficiencies and a recommendation for denial pursuant to subsection (E)(1)(a)(9) and provide written notice to the applicant of the

deficiencies and recommendation; and

- (v) The applicant may request an informal interview with the board to review the recommendation of division staff for denial of certification because of the deficiencies, if the request is submitted to the board in writing within ten days of the date of the notification.
- (c) If the board denied certification for reasons other than failure to meet the education or experience requirements, the applicant shall present new documentation to address the original issues resulting in denial including all of the following:
  - (i) Demonstration of acceptance of responsibility for the conduct leading to the denial by the board; and
  - (ii) Establishment of good moral character.
- (d) In determining whether the applicant has established good moral character, the board shall conduct an informal interview with the applicant, no later than 60 days after the applicant has submitted a completed application.
- (e) Upon a showing of good cause, the applicant may apply for certification sooner than twelve months if denied solely for lack of education or experience necessary for certification, if those circumstances have changed.
- (f) The applicant may not reapply for certification if there are statutory provisions prohibiting certification as specified in the applicable ACJA section.

3. ~~4.~~ Time Limits Frames for Certification.

- a. The director shall develop time frames for the processing of certification applications by division staff, pursuant to subsection (D)(2)(a)(7).
- b. An Applicants shall respond timely to requests for information from the division program coordinator and program staff pertaining to their the applicant's application. Unless the applicant can show good cause as to why the program coordinator board should grant additional time, the program coordinator board shall not approve any applicant for certification unless the applicant successfully completes all requirements within twelve months of 90 days from the date division staff received the original initial application for certification or within 90 days of the applicant passing the program specific examination for certification if required by the applicable section of the ACJA. 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.
- c. If an applicant needs additional time to comply with division staff requests or to complete the application process within the time frames specified in this subsection, the applicant shall file a written request for an extension with division staff. The request shall state the reasons for additional time to comply with time frames and certification requirements. The applicant shall file the request for additional time to complete the initial application at a

- minimum, ten days prior to the 90 day deadline, unless the applicant makes a showing of good cause. Failure to complete the certification process or file a written request for an extension of time within this time period shall nullify and void the original application and supporting documents, including fingerprints, fees and the applicable examination scores.
- d. Division staff shall forward the written request for an extension of time to the board at the next scheduled board meeting.
- e. If the applicant fails to meet the 90 day deadline or is not granted additional time by the board to complete the initial certification process, the applicant is considered a new applicant. The applicant shall submit a new application including a fingerprint card and fee if applicable and certification and training fees. The applicant is not required to sit for the examination if the applicant submits the new application within one year of having successfully passed the required examination.
4. 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~~
- a. ~~(2) Applicant and 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.~~
- b. Division staff shall retain applicant and certificate holder records for a period of five years from the last activity in the record. Division staff shall take appropriate methods to ensure the confidentiality of any destroyed records.
- c. If an applicant or certificate holder needs to have personally identifying information contained in their files released to an employer or potential employer, the applicant or certificate holder shall sign a release of information form. Division staff shall provide the applicant or certificate holder with an approved form for this purpose.
- 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.~~
5. ~~g. Unlawful Use of Designation or Abbreviation. A person who has received from the program coordinator a certificate to practice in the program a specific profession or occupation from the board 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. The certificate holder shall not sell, transfer or assign its certification to any other entity.

6. Cease and Desist Order. The board, upon completion of an investigation or disciplinary proceeding, may issue a cease and desist order pursuant to subsection (H)(24)(a)(6)(g). A hearing officer or a superior court judge, upon petition by the board, may enter an order for an individual or business entity to immediately cease and desist conduct constituting engagement in the practice of the profession or occupation without the required certification.
7. Voluntary Surrender. A certificate holder in good standing may surrender their certificate to the board. However, the surrender of the certificate is not valid until accepted by the board. The board or division staff may require additional information reasonably necessary to determine if the certificate holder has violated any provision of the statutes, court rules and this section or the applicable section of the ACJA. 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. Division staff shall present the surrendered certificate to the board at the next available board meeting after receiving the surrender. Upon the board's acceptance of the voluntary surrender division staff shall designate the certificate of the certificate holder as a "surrendered certificate holder in good standing". Division staff shall notify the certificate holder in writing within ten days after the board's acceptance of the surrender.
  - b. The board shall not accept the surrender if there is a complaint pending against the certificate holder. However, this does not preclude the board from entering into a consent agreement to resolve the pending complaint pursuant to subsection (H)(24)(a)(6)(c) by terms including the voluntary surrender of the certificate.
  - c. The board shall, within 120 days of the receipt of the surrendered certificate by division staff either accept the surrender or, based upon the recommendations of division staff, institute disciplinary proceedings pursuant to subsection (H). If the board subsequently imposes a sanction pursuant to subsections (H)(24) and (H)(25) upon the certificate of the surrendered certificate holder, division staff shall change the status of the certificate holder from "surrendered certificate holder in good standing" to that of a person so disciplined.
8. Inactive Status.
  - a. A certificate holder may transfer to inactive status, upon written request to the board. Upon recommendation of division staff the board may accept the transfer of the certificate holder to inactive status and division staff shall note in the certification database the certificate holder is on inactive status, in good standing. The inactive certificate holder shall not engage in the practice of the profession or occupation of certification pro bono or

for a fee or other compensation while on inactive status and shall not present themselves as a certificate holder.

b. Upon application and payment of any applicable fee for reactivation of certification, required by the applicable section of the ACJA, the board may require the applicant to comply with the following:

(1) Submit proof of compliance with the requirements for continuing education;

(2) Submit other proof required by the board to:

(a) Demonstrate the applicant possesses the skills necessary to practice in the profession or occupation;

(b) Demonstrate the applicant remains in compliance with the applicable ACJA sections; and

(c) Demonstrate compliance with other requirements for certification.

(3) If the applicant for reinstatement engaged in the profession or occupation in another jurisdiction during the time the certificate holder's certificate was inactive, the applicant shall submit all of the following:

(a) Proof of practice in the profession or occupation in the other jurisdiction;

(b) An affidavit affirming the applicant has not been disciplined in another jurisdiction; and

(c) An affidavit affirming the applicant is not subject to discipline or being investigated in another jurisdiction.

(4) If the applicant has been inactive for more than one year the board may require the applicant to sit for and pass the applicable examination.

c. If the applicant meets the requirements of this subsection to the satisfaction of the board, the board shall return the inactive certificate holder to active status. Division staff shall

change the status of the certificate holder from "inactive" to "active" and notify the certificate holder of the board's decision within ten days.

d. A certificate holder shall only remain in an inactive status as specified by the applicable ACJA section.

9. Reinstatement after Suspension or Revocation. A certificate holder whose certificate was suspended or revoked by a final order of the board may apply for reinstatement under the following conditions:

a. An applicant for reinstatement shall file a written application for reinstatement with division staff, accompanied by the appropriate fees and the following documents:

(1) The reinstatement form and a copy of the final order of suspension or revocation;

(2) 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

disciplinary clerk and the date of application for reinstatement after suspension or an initial application for recertification;

- (3) 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;
  - (4) 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;
  - (5) 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 division staff receive the application for reinstatement;
  - (6) 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 suspension order until the date division staff receives the reinstatement application;
  - (7) 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 division staff receive the application for certification;
  - (8) A statement of facts supporting reinstatement to the profession or occupation after suspension; or a statement of facts supporting certification again to the profession or occupation; and
- (9) A statement of all facts demonstrating the applicant's rehabilitation during the period of time from the date of the board's order revoking the applicant's certificate or suspending the applicant's certificate, until the date division staff receive the application for reinstatement or initial certification.
- b. Division staff or the board may require additional information demonstrating the applicant meets the minimum competencies of the profession or occupation. The board may require the applicant sit for and pass the applicable 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, the applicant meets the minimum competencies of the profession or occupation. An applicant denied reinstatement by the board has the right to a hearing pursuant to subsection (H)(12), 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 requirements of subsection (E)(9)(a), the applicant shall meet all requirements of initial certification pursuant to subsection (E)(1). The applicant, for reinstatement after a suspension or revocation, shall pay the fee for reinstatement, pursuant to subsection (K) in the applicable section of the ACJA.
  
- d. The board shall not issue any certification under this section to any person or business entity whose certification has been suspended until:
  - (1) The person or business entity seeking reinstatement of a suspended certificate has demonstrated all the requirements of the suspension order have been met; and
  - (2) The person or business entity qualifies in accordance with the applicable provisions of this section or other sections of the ACJA.
  
- e. The board shall not issue any certification under this section to any person or business entity whose certification has been revoked until:
  - (1) One year has passed from the date of the board's final order of revocation;
  - (2) The person or business entity seeking certification provides proof of satisfaction of any and all requirements in the order of revocation; and
  - (3) The person or business entity again qualifies in accordance with the provisions of subsection (E)(1) and the applicable sections of the ACJA.

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

1. Code of Conduct. Each individual certificate holder shall adhere to a the program specific code of conduct or standards of conduct, subsection (J) in the applicable section of the ACJA. ~~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~~ division staff a statement indicating the name for transaction of the business and the legal full name of the certificate holder.
4. Response. ~~An applicant or~~ A certificate holder shall respond by the specific time stated in any request to request for information from, and shall provide documents to the director, deputy

director, ~~program coordinator, division staff, or board and program staff~~ pertaining to certification, renewal of certification, complaints alleging acts of misconduct or violations by the certificate holder, investigative inquiries ~~by the director, deputy director, program coordinator or program staff~~ and any compliance audits or reviews or defensive driving course monitorings of the practice of the certificate holder. ~~The A~~ certificate holder shall respond to any subpoenas or orders issued by the director, division director, board, 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 pursuant to subsection (H)(6)(c) or denial of renewal of certification pursuant to subsection (G)(3) and (G)(4). Failure to comply with this subsection by a certificate holder in completion of a corrective action plan or defensive driving course monitoring may constitute grounds for discipline, pursuant to subsection (H)(6)(b).

5. Candor.

a. A certificate holder shall not knowingly:

(1) a. Make a false statement of material fact or law to a tribunal; or

(2) b. Fail to disclose a material fact to a tribunal, except as required by applicable law.

b. A certificate holder shall notify division staff within ten days of a misdemeanor or felony conviction.

6. Change of Name or Address. A certificate holder shall notify division staff ~~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, pursuant to the applicable sections of the ACJA. 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 applicable section of the ACJA. ~~program specific section.~~ All certificates shall continue in force until expired, voluntarily surrendered, placed on inactive status, suspended or revoked.
  - a. 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.
  - b. The board may request an informal interview with the applicant for renewal, pursuant to subsection (D)(5)(c)(2)(b), 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 in this section and the applicable section of the ACJA.
  - c. If the renewal application is denied, the existing certification does not expire until the last day for seeking a hearing on the decision to deny, pursuant to subsection (E)(3)(2)(c)(45); ; or if a hearing is requested, until the final decision is made by the ~~director~~ board pursuant to subsection (H)(25).
  - d. The certificate of a Any certificate holder who does not supply a complete renewal application certification for which the request for renewal and payment of the renewal fee is not received in the specified time and manner by to the program division staff shall expire as of the expiration date in the applicable program specific section of the ACJA. The program coordinator Division staff shall treat any renewal application received after the expiration date as a new application.
2. Application. ~~The~~ A certificate holder is responsible for applying for a renewal certificate. The certificate holder shall apply for renewal of certification on the form provided by

~~division staff the program.~~ The ~~program coordinator board may shall~~ 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~~ recommending renewal of certification, ~~the program coordinator division staff~~ may require additional information reasonably necessary to determine if the applicant continues to meet the qualifications specified in this section, which may include:

a. ~~Background information, pursuant to subsection (E)(2)(f)(1)(a) and the program specific applicable section of the ACJA;-~~

b. A personal credit review and review of records pertaining to the applicant by division staff, pursuant to subsection (E)(1)(a)(5); and

c. ~~Fingerprinting pursuant to subsection (E)(2)(e)(1)(d); or~~

4. Decision Regarding Renewal.

a. The ~~program coordinator board~~ may renew a certification if the certificate holder:

(1) Meets all requirements for renewal as specified in this section and the program specific applicable section of the ACJA;

(2) Submits a completed renewal application; and

(3) Pays the renewal fees on or before the expiration date as specified by the program specific applicable section of the ACJA.

b. ~~The program coordinator Division staff shall promptly notify qualified the applicants in writing of the board's decision to renew the applicant's renewal of their certification certificate in accordance with this section and the program specific applicable section of the ACJA.~~ Each renewed certified applicant shall receive a document, badge or card evidencing renewal of certification, stating the applicant's name, date of certification, certification number and expiration date.

c. The ~~program coordinator board~~ may deny renewal of certification for any of the reasons stated in subsection ~~(E)(3)(2)(c)~~. ~~The program coordinator Division staff shall promptly notify the applicant, in writing, within ten days of the board's decision to deny renewal of certification. The notice shall include each applicant denied renewal of certification, the board's 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 the disciplinary clerk receives a written request for a hearing is received by the program within fifteen days after the date of the 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)(12)~~ through (H)(23), ~~and (H)(25)~~ and through (H)(27) apply regarding procedures for hearing and appeal.

## **H. Complaints, Investigations, Disciplinary Actions, Proceedings and Certification and Disciplinary Hearings.**

### 1. Complaints: Filing and General Provisions.

a. Filing of complaint. All judicial officers, ~~and court employees~~ and certificate holders shall, and any person may, notify ~~the program division staff~~ if it appears a certificate holder has violated statutes, court rules, this section or the program specific applicable section of the ACJA. The complainant shall provide the complaint in writing with sufficient specificity to warrant further investigation. The complaint form shall ~~also~~ provide the name, ~~and telephone number~~ and address 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)(e) or G(4)(e) and the program specific section.~~

b. Director initiated complaints. In accordance with the policies and procedures developed pursuant to subsections (D)(2)(a)(6) and (D)(2)(b)(2), the director may direct division staff to investigate allegations of acts of misconduct or violations of statutes, court rules, or the ACJA, 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.

(1) Review of allegations. Division staff shall:

(a) Review the allegations and determine if the supreme court has jurisdiction;

(b) Determine if there is sufficient information to permit investigation;

(c) Verify details in the allegations including the certificate holder's status and, if

- available, any addresses, phone numbers or other relevant factors;
- (d) Corroborate, by independent observations and information, the allegations of acts of misconduct or violations of statutes, court rules or the ACJA, to determine if the allegations are credible and reliable; and
- (e) Meet with the division director to confirm jurisdiction and relevant factors contained in the allegations.
- (2) Division staff shall, upon completion of the review, prepare a written report of the allegations and include the following:
  - (a) Confirmation of supreme court jurisdiction;
  - (b) Determination, if the allegations are true, they would warrant discipline;
  - (c) Verification of details in the allegations; and
  - (d) Corroboration of relevant facts by independent observations.
- (3) Division staff shall forward the written report to the director for review and schedule a meeting with the director and division director.
- (4) The director shall review the written report and direct staff to:
  - (a) Conduct further review of the allegations;
  - (b) Initiate a complaint naming the director as the complainant, pursuant to subsection (D)(2)(b)(3); or
  - (c) Determine the allegations do not warrant the filing of a director initiated complaint.

c. Anonymous complaints. Division staff shall not accept anonymous complaints.

e.d. Authority after expiration. If a complaint or investigation is pending prior to the expiration date of a certificate, the provisions described in of subsection (G)(1) and the applicable program specific sections of the ACJA do not affect the right authority of:

- (1) The director to initiate a complaint, pursuant to subsection (D)(2)(b)(3);
- (2) Division staff to investigate a complaint, pursuant to subsection (D)(4)(b)(5); or and
- (3) The board to take disciplinary action regarding the certification of a certificate holder, if a complaint or investigation is pending prior to the expiration date pursuant to subsection (D)(5)(c)(1)(g).

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).

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 division staff, receive notice of any public proceeding concerning the complaint or any consent agreements. The complainant submits to the jurisdiction of the supreme court's certification and licensing division for all purposes relating to the proceedings

- (1) The complainant shall keep division staff informed of any changes of mailing address, telephone number or email address during the investigation and any disciplinary proceedings.
- (2) Division staff shall forward any correspondence or notice to the complainant by United States mail to the last address of record with division staff.
- (3) Division staff shall provide the complainant with the following information:
  - (a) A written acknowledgement of the receipt of the complaint;
  - (b) A copy of the letter sent to the certificate holder requiring a response to the alleged acts of misconduct or violations and the initial response by the certificate holder, within twenty days of receipt of the certificate holder's initial response;
  - (c) Notice, if the complainant has requested notice, of any public proceeding concerning the complaint or any consent agreement;
  - (d) Notice of the final disposition of each allegation; and
  - (e) Notice of the dismissal of the complaint within ten days of the determination by the division director, if applicable, pursuant to subsection (H)(2)(b).
- (4) Failure by division staff to provide the complainant with information as required by this subsection shall not affect the ultimate disposition of any allegations of acts of misconduct or violations by the certificate holder.
- (5) The complainant may file a request for review by the board of the division director's dismissal of the complaint, within ten days of the date of the notice of dismissal pursuant to subsection (H)(2)(e).

f. Non-abatement. Unwillingness, failure of the complainant to cooperate with division staff or the board, 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.

g. 7. Confidentiality of Complaints. The director, deputy director, ~~program coordinator,~~ ~~program~~ division staff, board and court employees shall keep information or documents obtained or generated by the director, deputy director, ~~program coordinator~~ division staff, board 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 this section.

a.(1) Confidential information may also be disclosed during the course of an open investigation:

- (1) ~~(a)~~ (a) To court staff, the attorney general, county attorney, law enforcement and ~~other~~ regulatory officials; ~~or~~
- (2) ~~(b)~~ (b) 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
- (c) ~~is~~ is not contrary to law.

b.(2) Once a finding of probable cause is ~~determined~~ has been entered all information

and documents are open for public inspection unless:

- ~~(1)~~ (a) Confidential by law or public record rules adopted by the supreme court; or
- ~~(2)~~ (b) If the deputy director, as probable cause ~~panelist~~ evaluator, determines further investigation is necessary, the information or documents and those compiled involved in the further investigation shall remain confidential until probable cause is determined.
- (3) Complaints dismissed by the division director, pursuant to subsection (H)(2)(b) for lack of jurisdiction or clear insufficiency are confidential and not a matter of public record for inspection.
- (4) Complaints dismissed by the board, pursuant to subsection (H)(24)(a)(3) are a matter of public record for inspection.

h. Investigative Subpoenas. Upon the recommendation of division staff and a demonstration of good cause, the division director, pursuant to subsection (D)(4)(a)(1), may issue an investigative subpoena to any person or entity:

- (1) For the purpose of securing documents or information from any person or entity, if the documents or information are related to a pending investigation of alleged acts of misconduct or violations regarding statutes, court rules, this section or the applicable section of the ACJA.
- (2) Subpoenas issued by the division director 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.

i.6. Processing Time Frames. The ~~program~~ Division staff shall:

- (1) Prepare any complaint the division director has dismissed pursuant to subsections (H)(2)(b) and (c) and forward the complaint to the board for review, pursuant to subsection (H)(2)(d), at the next regularly scheduled board meeting.
- ~~a.~~ (2) Prepare and forward a notice of dismissal to the ~~director~~, board for review at the next regularly scheduled board meeting, any investigated complaint the deputy director has reviewed and entered a finding regarding probable cause, pursuant to subsection (H)(5)(c). ~~within fifteen days after the determination by the deputy director there is no probable cause, unless the deputy extends the time for good cause;~~
- (3) Prepare the documents for informal discipline no later than 30 days following the order of the board, pursuant to subsections (H)(7)(b) and (H)(25), unless the board extends the time for good cause.
- (4) Prepare the documents for formal discipline no later than 30 days following the order of the board pursuant to subsections (H)(9)(b) and (H)(25), unless the board extends the time for good cause.
- ~~b.~~ (5) File ~~the a notice of informal or formal~~ statement of disciplinary charges ~~proceedings with the disciplinary clerk and arrange for service no later than 60~~ 30 days ~~from the date of determination of probable cause~~ following the order of the

board, pursuant to subsection (H)(10), unless the ~~deputy director~~ board extends the time for good cause.;

- ~~e.~~(6) File a notice of formal disciplinary proceedings no later than 30 days from the date Serve the board's order of an order of emergency summary suspension and expedited hearing immediately on the certificate holder, pursuant to subsection (H)(9)(d)(2). H(5); and
- (7) Except as provided in subsections (H)(1)(i)(6) and (8), deposit in the United States mail addressed to the last known address on file with division staff, written notice of the board's final decision and order, regarding a complaint matter, to the certificate holder and complainant within ten days after the board's decision, pursuant to subsection (H)(26)(b) and (c). Notice by mail is complete upon deposit in the United States mail.
- (8) Mail the board's final order of suspension or revocation of the certificate, pursuant to subsection (H)(26)(b) to the certificate holder, by certified mail return receipt requested, within two days, after the board's decision, addressed to the last known address on file with division staff; and
- ~~d.~~(9) Process complaints timely, with the goal of processing 98 percent of all complaints within 22 months from date of receipt to final decision by the ~~director~~ board.

2. Initial Screening of a Complaint. 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. Upon receipt of a complaint:

a. Division staff shall:

(1) Consider if a complaint:

- (a) Falls outside the supreme court's jurisdiction;
- (b) Does not provide the name of a certificate holder;
- (c) Does not contain sufficient information to permit an investigation;
- (d) Does not provide specific allegations of acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA;
- (e) Contains allegations of acts of misconduct or violations, that if true, would not constitute a violation of the statutes, court rule, this section or the applicable section of the ACJA, the certificate holder is required to comply with;
- (f) Does not provide the name of the complainant; or
- (g) Does warrant further investigation and evaluation.

(2) Recommend the division director dismiss the complaint if the complaint:

- (a) Falls outside the jurisdiction of the supreme court, court rules, this section, the applicable section of the ACJA, or the laws applicable to the certificate holder;
- (b) Does not provide the name of a certificate holder;



3. Preliminary Investigation and Recommendation. Division staff shall investigate the complaint, after completion of the initial screening of the complaint and the determination a complaint is within the jurisdiction of the supreme court and warrants further investigation pursuant to subsection (H)(2)(a)(1)(g).
  - 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~~ Division staff shall conduct an investigation of all complaints not dismissed by the division director to determine if a certificate holder has violated statutes Arizona law, court rules, this section, or the program specific applicable section of the ACJA; or for the purpose of securing information useful in the lawful administration of the law, this section, or the program specific applicable sections of the ACJA. 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.~~
  - b. Notification to Certificate Holder of Complaint. Division staff shall send the complaint to the certificate holder within fifteen days of receiving the complaint or the date the director initiates a complaint pursuant to subsections (D)(2)(b)(3) and (H)(1)(b)(4)(b).
  - c. ~~Response from Certificate Holder's Response to Notification of Complaint. 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 to the complaint within thirty days of the notification of the complaint. The program coordinator, program staff, deputy director and director board shall not proceed with disciplinary action without providing the certificate holder the complaint and the an opportunity to respond to the complaint, except in a matter regarding an emergency suspension pursuant to subsection (H)(9)(d). Failure by the certificate holder to accept notification of a complaint or failure to respond to the complaint shall not prevent the program coordinator, program division staff, deputy director or director from proceeding with an investigation and the board from taking any disciplinary action.~~
    - (1) If the certificate holder is unable to respond to a complaint within the time frame established by subsection (H)(3)(c), the certificate holder may submit a written request to the division director for an extension of time to respond. The request for an extension of time to respond shall demonstrate good cause exists for an extension and shall provide a proposed date for fulfillment of the response requirement. The certificate holder shall file the written request for an extension of time to respond to

the complaint, no later than five days prior to the date the response is due.

(2) The division director shall determine if good cause exists for an extension. Division staff shall notify the certificate holder of the division director's decision on the request for an extension of time for providing a written response, within five days of the request for extension from the certificate holder.

d. 4. Preparation of Investigation Summary Staff Recommendations. Upon completion of the preliminary investigation, ~~the program coordinator and program division~~ staff shall prepare a written ~~ease~~ investigation summary of the investigation results for review by the probable cause evaluator ~~panelist~~. The investigation summary shall include an analysis of the allegations of misconduct and violations and staff a recommendations as to whether probable cause exists demonstrating the certificate holder committed for disposition of any of the alleged acts of misconduct or violations.

4. 5. Probable Cause Review. Pursuant to subsection (H)(4) division staff shall forward the investigation summary to the probable cause evaluator for review and determination as to whether probable cause exists misconduct or violations occurred and are demonstrated in the investigation summary.

a. The deputy director, ~~acting~~ serving in the capacity of a probable cause ~~panelist~~, evaluator pursuant to subsection (D)(3)(a), shall review the written ~~ease~~ investigation summary of the allegations of acts of misconduct or violations. The deputy director may agree or disagree with the recommendations contained in the ~~written ease~~ summary and may do one or more of the following:

a. (1) Direct program division staff to investigate further;

b. ~~Recommend the director refer the complaint to another entity with jurisdiction;~~

~~e. (2) Determine probable cause does not exist that demonstrating the certificate holder has committed any acts of misconduct or violations of the statutes, court rules, this section, or the applicable section of the ACJA and enter a written finding to that effect; or 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. (3) Make a determination Determine of probable cause exists that misconduct by demonstrating the certificate holder has occurred and recommend to the director: committed one or more acts of misconduct or violations of the statutes, court rules, this section, or the applicable section of the ACJA and enter a written finding to that effect.~~

~~(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).~~

b. If the probable cause evaluator directs division staff to investigate the complaint further, pursuant to subsection (H)(5)(a)(1), division staff shall do so immediately.

c. Upon review of the finding by the probable cause evaluator, pursuant to subsection (H)(5)(a)(2) and (3), division staff shall forward to the board, pursuant to subsection (H)(1)(i)(2), the investigation summary, finding by the probable cause evaluator and a written recommendation by the division director for the appropriate disposition of the complaint. The written recommendation by the division director shall include any sanctions if applicable, pursuant to subsections (H)(7), (H)(9), (H)(24)(a)(6) and (H)(24)(b). The board shall review these documents at the next regularly scheduled board meeting and do one of the following:

(1) Determine the certificate holder did not commit any acts of misconduct or violations and dismiss the complaint pursuant to subsections (D)(5)(c)(1)(g) and (H)(24)(a)(3);

(2) Determine the allegations of acts of misconduct or violations do not warrant discipline pursuant to subsection (D)(5)(c)(1)(g), but the certificate holder's actions need modification or elimination and send an advisory letter to the certificate holder pursuant to subsections (H)(24)(a)(4) and (H)(24)(b)(1);

(3) Determine the allegations of acts of misconduct or violations may be resolved through informal discipline proceedings pursuant to subsection (H)(7);

(4) Determine the acts of misconduct or violations may be resolved through a formal interview, pursuant to subsection (H)(8);

(5) Determine the acts of misconduct or violations may be resolved through a formal discipline proceeding, pursuant to subsection (H)(9); or

(6) Determine the acts of misconduct or violations pose harm or a risk to the public health, safety or welfare and require resolution through an emergency summary suspension, pursuant to subsection (H)(9)(d). An emergency summary suspension is a formal discipline proceeding.

6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one of more of the following:

a. Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;

b. Failed to comply with or complete a corrective action plan resulting from an audit or course monitoring;

- c. Failed to cooperate with or supply information to the director, deputy director, division staff or board by the specific time stated in any request;
- d. Aided or assisted another person or business entity to provide services requiring certification if the other person or entity does not hold the required certification;
- e. Conviction of a criminal offense while certified by final judgment of a felony relevant to certification;
- f. Failed to provide information regarding a criminal conviction;
- g. Exhibited gross negligence;
- h. Exhibited incompetence in the performance of duties;
- i. Evaded service of a subpoena or notice of the director, division director or board;
- j. The existence of any cause for which original certification or renewal of certification could have been denied pursuant to subsections (E)(2)(c) or (G)(4)(c) and the applicable section of the ACJA;
- k. 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 a certificate;
  - (2) Failed to comply with any court order, board order or other regulatory agency order relevant to the profession or occupation;
  - (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 any terms of a consent agreement, restriction of a certificate or corrective action plan;
  - (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 supreme 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) Delegated professional or occupational responsibilities or duties to an employee or person who the certificate holder knows does not possess the necessary level of education, experience, skills or credentials to perform the duties of the profession or occupation unless authorized to do so by the applicable section of the ACJA;
- (14) 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.

7. 8. Informal Disciplinary Proceedings.

- a. Commencement. Following entry of ~~On~~ a finding of probable cause by the ~~deputy director~~ probable cause evaluator and review of the recommendation of the division director pursuant to subsections (H)(5)(a) and (c), the ~~director~~ board may commence informal disciplinary proceedings if the ~~director~~ board finds the complaint is appropriate for resolution through informal disciplinary proceedings.
- b. Decision of the Board Director. ~~On review of the recommendation of the deputy director, ~~the director~~ board may resolve the complaint through informal disciplinary proceedings and impose an informal sanction pursuant to subsection (H)(24)(a)(6)(a) or may take other action pursuant to this section. The Board, pursuant to subsection (D)(5)(c)(1)(f)(iv), shall order the preparation of documents necessary to commence informal disciplinary proceedings. The board may make procedural determinations to consolidate or sever any informal discipline matter pursuant to subsection (D)(5)(c)(2)(e). The provisions of subsections (H)(24) and (H)(25) apply to the decision and order of the ~~board~~ 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~~ special action proceedings pursuant to subsection (H)(27); and
  - (4) Are not confidential.

8. Request for Formal Interview. Upon entry of a finding of probable cause by the probable

cause evaluator and review of the recommendation of the division director pursuant to subsections (H)(5)(a) and (c), and a board determination formal discipline is warranted, but before the filing of the formal statement of charges, the board may request a formal interview with a certificate holder, pursuant to subsection (D)(5)(c)(2)(d). The request for a formal interview is to determine if the facts of the complaint may be capable of resolution outside of a formal disciplinary process by consent agreement or other negotiated settlement, pursuant to subsection (H)(24)(a)(6)(c) between the board and certificate holder. The board shall hold the formal interview at the next regularly scheduled board meeting, unless the board determines good cause to expedite the interview.

a. Once the board determines a formal interview is necessary, division staff shall provide the certificate holder a copy of the investigation summary, finding by the probable cause evaluator and the written recommendation by the division director for the appropriate disposition of the complaint. Division staff shall also provide written notice of the day

and time of the scheduled interview. If the certificate holder declines the board's request for an interview, the certificate holder does not forfeit the right to request a hearing pursuant to subsection (H)(12).

b. If the certificate holder declines the board's request for a formal interview, or if the division director's recommended sanctions for future found violations include a suspension of more than twelve months or revocation, the board shall order the preparation of documents necessary for a filing of a formal statement of charges pursuant to subsections (D)(5)(c)(1)(f)(iv) and (H)(9)(b). The board may consolidate or sever any discipline matter pursuant to subsection (D)(5)(c)(2)(e).

c. Upon the completion of the formal interview, if the board enters a finding the evidence obtained during the investigation or provided by the certificate holder merits a suspension of more than twelve months or revocation of the certificate, the board shall order the preparation of documents for filing a formal statement of charges, pursuant to subsections D(5)(c)(1)(f)(iv) and H(9)(b).

d. Upon the completion of the formal interview, if the board enters a finding the evidence obtained during the investigation or provided by the certificate holder demonstrates the public's health, safety, or welfare requires emergency action, the board shall issue an emergency summary suspension order pursuant to subsections (D)(5)(c)(1)(f)(v) and H(9)(d).

e. Upon completion of the formal interview, if the board determines the evidence obtained during the investigation or provided by the certificate holder does not merit a suspension of more than twelve months, revocation, or an emergency summary suspension, the board may take one or more of the following actions:

- (1) Determine the certificate holder did not commit any acts of misconduct or violations of statutes, court rules, this section, or the applicable section of the ACJA and dismiss the complaint pursuant to subsections (D)(5)(c)(1)(g) and (H)(24)(a)(3);
  - (2) Determine the allegations of acts of misconduct or violations of statutes, court rules, this section, or the applicable section of the ACJA, do not warrant discipline, but the certificate holder's actions need modification or elimination and send an advisory letter to the certificate holder, pursuant to subsections (D)(5)(c)(1)(g), (H)(24)(a)(4) and (H)(24)(b)(1);
  - (3) Determine the certificate holder committed one or more acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA, and the complaint is appropriate for resolution through informal discipline proceedings pursuant to subsections (D)(5)(c)(1)(g) and (H)(7);
  - (4) Determine the certificate holder committed one or more acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA, and the complaint is appropriate for resolution through a consent agreement as part of formal disciplinary proceedings, pursuant to subsections (D)(5)(c)(1)(g) and (H)(24)(a)(6)(c); or
  - (5) Determine the certificate holder committed one or more acts of misconduct or violations of the statutes, court rules, this section or the applicable section of the ACJA and the complaint is appropriate for resolution only through formal discipline proceedings, pursuant to subsection (D)(5)(c)(1)(g) and (H)(9).
- f. If the board, after the formal interview is concluded, determines the acts of misconduct or violations warrant an emergency summary suspension, the board shall make an order for an expedited hearing, pursuant to subsections (H)(9)(d)(1) and (H)(12)(d).

## 9. Formal Disciplinary Proceedings.

- a. Commencement. Upon entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsection (H)(5)(c), the director or board may commence formal disciplinary 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. Decision of the Board. On review of the recommendation of the division director, the board may resolve the complaint through formal disciplinary proceedings and impose informal and formal sanctions pursuant to subsection (H)(24)(a) and (b) or may take other actions pursuant to this section. The board, pursuant to subsection (D)(5)(c)(1)(f)(iv) shall order the preparation of the documents necessary to commence formal disciplinary proceedings. The board may make procedural determinations to

consolidate or sever any formal disciplinary matter pursuant to (D)(5)(c)(2)(e). The provisions of subsections (H)(24) and (H)(25) apply to the decision and order of the board. Formal disciplinary proceedings:

- (1) Provide the certificate holder the right to a hearing, pursuant to subsection (H)(12)(c);
- (2) May result in informal and formal sanctions, including an emergency summary suspension pursuant to subsections (H)(24)(5) and (6);
- (3) May result in costs and civil penalties pursuant to subsections (H)(24)(6)(j) and (k);
- (4) Are subject to special action proceedings pursuant to subsection (H)(27); and
- (5) Are not confidential.

b.c. Notice to Certificate Holder. Upon commencement of formal disciplinary proceedings by a board order, division staff shall notify the certificate holder of the board's order and provide the certificate holder with a copy of the investigation summary, the division director's recommendations and the deputy director's finding of probable cause. 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).

5. d. Emergency Summary Suspension.

- (1) Upon entry of a finding of probable cause by the probable cause evaluator and review of the recommendation of the division director pursuant to subsection (H)(5)(c), ~~On a determination of probable cause,~~ if the board director finds the public health, safety or welfare is at risk and requires emergency action, ~~and incorporates a finding,~~ the board director shall order an immediate emergency summary suspension of a certificate holder and set a date for an expedited hearing 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.~~
- (2) Division staff shall ensure the order of emergency summary suspension is immediately served on the certificate holder with the notice of the emergency summary suspension and the expedited hearing as ordered by the board, pursuant to this subsection and subsection (H)(12)(d).
- (3) The hearing shall be held within ten days of the board's order of summary suspension.
- (4) The hearing officer shall only grant an extension of the ten day time period for holding the expedited hearing under extraordinary circumstances at the request of either party. The certificate holder may consent to a longer time period for the extension and the reasons for the extension shall be part of the record.

(5) Division staff shall notify all applicable courts including superior court presiding judges, clerks of the superior court and superior court administrators of the emergency summary suspension.

~~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 demand 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.~~

10. Notice of Formal Statement of Charges and Proceedings; and Right to Hearing. Upon motion and order of the board, division staff shall:

a. Prepare the formal statement of charges pursuant to subsection (H)(1)(i)(4) and include in the statement all of the following:

- (1) A short and plain statement of the allegations;
- (2) A reference to statutes, court rules, this section and the applicable ACJA section;
- (3) A statement indicating the certificate holder has the right to a hearing, pursuant to subsection (H)(12)(c);
- (4) A statement indicating the request for hearing shall be in writing and made within fifteen days of receipt of the notice, pursuant to subsection (H)(13); and
- (5) A statement of the requirements for filing an answer pursuant to subsections (H)(11) and (17).

b. Present the formal statement of charges to the board chair or designee for review and signature;

c. File the signed formal statement of charges with the disciplinary clerk;

d. Arrange for service of the notice of formal statement of charges to the certificate holder pursuant to Rule 4, Rules of Civil Procedure; and

e. Amendments to the formal statement of charges are permissible upon motion and order of the board.

~~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.~~

11. Answer to Formal Statement of Charges or Default. The certificate holder shall file an answer to the formal statement of charges within fifteen days after the date the statement is served, unless otherwise ordered by the board for good cause. Answers shall comply with Rule 8, Rules of Civil Procedure. Any defenses not raised in the answer are waived. If a certificate holder fails to file an answer within the time provided, the certificate holder is in default and the factual allegations in the formal statement of charges are deemed admitted. The board may enter a finding or findings against the certificate holder of one or more of the assertions contained in the notice.

~~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.~~

12. Right to Hearing.

a. Except as provided in subsection (E)(1)(f)(2)(d)(iii), an applicant denied initial or renewal certification pursuant to subsections (E)(2)(c) or (G)(4) may request a hearing.

b. Pursuant to subsection (E)(9)(b), an applicant denied reinstatement of certification may request a hearing, except if the applicant fails to provide required information within the requested time frame.

c. A certificate holder served with a formal statement of charges pursuant to subsection (H)(9) may request a hearing.

d. A certificate holder issued an emergency summary suspension pursuant to subsection (H)(9)(d)(1) shall have an expedited hearing.

~~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.~~

13. Request for Hearing. The applicant or certificate holder shall request the hearing within fifteen days of the notice of denial of initial or renewal certification; or the notice of a formal statement of charges. The request shall include the ACJA subsection entitling a person or business to a hearing, the factual basis supporting the request for hearing and the relief demanded.

14. Selection Appointment of Hearing Officer for Certification or Discipline Hearing. Upon written request by an applicant or certificate holder entitled to a hearing pursuant to subsection (H)(12), the director disciplinary clerk may appoint shall select 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.~~

a. The disciplinary clerk shall select a hearing officer from the list of hearing officers appointed by the supreme court. The hearing officer shall have the following qualifications:

(1) Admitted to the practice of law in Arizona; and

(a) An active member in good standing for at least seven years with the State Bar of Arizona; or

(b) An active or retired judicial officer.

(2) Have knowledge in the procedure for conducting administrative hearings regarding the denial of initial or renewal of certification or alleged acts of misconduct or violations by a certificate holder pursuant to this section or the applicable ACJA section.

b. The disciplinary clerk may request the presiding judge of the superior court in the county where the alleged acts of misconduct or violations occurred to supply a hearing room and any other necessary resources.

15. Time Line for Hearing. The disciplinary clerk ~~director~~ or hearing officer shall:

a. Eensure the hearing is held within 45 60 days of receipt of the request for hearing. if the request is made by an applicant, unless postponed by mutual consent for good cause. The hearing officer may continue the hearing date upon request or stipulation of the parties, or upon the hearing officer's own motion, for good cause shown. The hearing officer shall grant continuances no more than 30 days at a time and may not extend the hearing on the merits beyond 120 days from the filing of the formal statement of charges.

b. If the request to continue the hearing is from the program coordinator, filed by division staff, 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 disciplinary clerk ~~program coordinator~~ shall prepare and give notice of the hearing to the applicant or certificate holder and division staff ~~parties~~, at least fifteen days prior to the date set for hearing.

a. The notice shall include the following information:

~~(2)~~-(1) A statement of the legal authority and jurisdiction for conduct of the hearing;

~~(1)~~-(2) A statement of the date, time, place and nature of the hearing; and

- (3) A reference to the particular sections of the statutes, rules, and 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 disciplinary clerk program coordinator shall accomplish service of the notice of hearing by personal service or certified United States mail return receipt requested to the last business address of record on file with division staff, the program coordinator. Proof of service is made by filing with the hearing officer a verified statement service was made. Service is accomplished in accordance with Rule 5, Rules of Civil Procedure by mail is complete upon deposit in the United States mail.
  - c. If a party is represented by an attorney represents an applicant, certificate holder or division staff, the disciplinary clerk program coordinator shall make service upon to the attorney of record.

17. Filings; Answers of and Pleadings, Motions and Other Documents.

- ~~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.~~
- ~~a. b. Parties~~ The applicant or certificate holder and division staff shall file all pleadings, motions or other documents with the disciplinary clerk at least five fifteen days prior to the scheduled hearing date, unless otherwise ordered by the hearing officer.
- ~~b. e. The applicant or certificate holder and division staff Parties~~ shall file responses to all pleadings, motions, or other documents with the disciplinary clerk within five ten days of the filing of the pleading, motion, or other document.
- c. The party filing the pleading, motion, or other document may reply within five days of the filing of the response to the motion.
- d. Copies of all filings shall be delivered to the ~~executive office of the AOC~~, disciplinary clerk, the hearing officer; and all parties to the proceeding.

18. Discovery.

- a. There is No discovery is permitted, except as provided in this section, unless mutually agreed to by the parties or permitted ordered 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. Upon on the hearing officer's own motion or upon request by a party, †The hearing officer may require shall order the disclosure of documentary evidence intended for use at the hearing provided the evidence is not privileged. The hearing officer shall order the disclosure at least ten days prior to the hearing.
- d. A hearing officer shall review and rule upon any claims of privilege challenged by a party with respect to subsections (H)(18)(b) and (c).
- e. Within fifteen days of receipt of the notice of hearing, the parties shall exchange a list of witnesses containing the names, addresses and telephone numbers of all persons known to have knowledge of the relevant facts. The list of witnesses shall designate those persons the parties intend to call at the hearing and summarize the anticipated testimony of each witness.
- ~~f.~~ Parties may submit a motion to the hearing officer to take depositions of witnesses for use as evidence of witnesses who cannot be subpoenaed or are otherwise unable to attend the hearing, for use as evidence at the hearing. The hearing officer may order the deposition of any other witness upon motion and for good cause shown. In order to take a deposition, a either circumstance, the requesting party shall file a written motion for deposition with the hearing officer within ten days of the filing of the list of witnesses. a written motion. The requesting party shall provide 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.
- ~~g.~~ Parties shall file responses to requests for depositions, including motions to quash, within five days after the filing of the request for deposition. The hearing officer shall enter a final order regarding any motions for depositions.
- ~~h.~~ ‡ If a deposition is permitted and ordered by the hearing officer, 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 the~~ 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. ~~e.~~ Subpoenas shall be issued by a hearing officer and served in the same manner as provided by Rule 45, Rules of Civil Procedure. ~~the Arizona Rules of Civil Procedure~~. An employee of  
  
the court or any other person as provided designated by Rule 45, Rules of Civil Procedure ~~the Arizona Rules of Civil Procedure~~ may serve the subpoena.
- c. ~~b.~~ If a person fails to obey a subpoena served in accordance with the provisions of this section, the ~~director board~~ 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 subpoena~~ as contempt of court and may impose penalties as though the person had disobeyed a subpoena issued by the court.

20. Prehearing Conference. The hearing officer may order and conduct 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: imposing limitations to promote simplicity in procedures, fairness in administration, elimination of unnecessary expense and protection of the public while preserving the rights of the certificate holder. The hearing officer may take any of the following actions:

- a. Establish a hearing schedule to ensure early and continuing control so the matter shall not be protracted because of lack of management;
- b. Dispose of outstanding procedural matters;
- c. ~~a.~~ To reduce or simplify Narrow the issues for adjudication;
- d. ~~b.~~ To Dispose of preliminary legal issues, including ruling on pre-hearing motions;
- e. ~~c.~~ To stipulate Obtain stipulations from the parties to the admission of evidence, facts and legal conclusions not contested;
- f. ~~d.~~ To Identify witnesses and coordinate testimony; and
- g. ~~e.~~ To Consider any other matters to aid in the expeditious conduct of the hearing.

## 21. Procedure at Hearings.

- a. Hearing Officer. The hearing officer shall preside over the hearing. ~~The hearing officer has the and authority to~~ decide all requests for a continuance, 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~~ applicant or certificate holder 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~~ file a notice of appearance with the disciplinary clerk 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, as permissible pursuant to Arizona Supreme Court Rule 31.
  - (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) All hearings are open to the public and shall conform to the provisions of ACJA § 1-202: Public Meetings. The hearing officer may close the hearing to the public, pursuant to ACJA § 1-202(C)(5).
  - ~~(2)~~(2) 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).~~
  - ~~(3)~~(3) The hearing officer shall require all testimony ~~considered~~ taken 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)~~(4) In all formal disciplinary matters brought at the request of the program, as the result of an order by the board, evidence in support of the ~~program's action~~ formal statement

of disciplinary charges is presented first and carries the burden of proof by a preponderance of the evidence. In matters brought at the request of someone any other person or entity other than the program, including requests for hearing on the denial of initial certification, or renewal of certification or disciplinary matters, the person or entity seeking the hearing shall present first and carries the burden of proof, by a preponderance of the evidence.

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. Upon the request of any party to the proceedings and payment of any costs, the record of the proceedings shall be transcribed.
- (2) A certified court reporter shall make a full stenographic record transcript 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). If transcribed, the record is part of the court's record of the hearing and any other party with a direct interest shall receive a copy of the record, at the request and expense of the requesting party.

22. Recommendations Report of Hearing Officer.

- a. The hearing officer shall, within 30 days of the closing of the record of a hearing, prepare a written recommendations report and deliver file the recommendations report with to the disciplinary clerk director. The recommendations report shall include findings of fact, based on a preponderance of the evidence and conclusions of law, separately stated.
- b. The hearing officer shall take testimony and receive evidence regarding alleged acts of misconduct or violations and possible sanctions. If the hearing officer recommends the board enter a finding the certificate holder committed one or more acts of misconduct or violations, the hearing officer shall include in the recommendation report, in a separately stated section, an analysis of mitigating and aggravating factors and recommended imposition of permissible sanctions pursuant to subsection (H)(24). The hearing officer shall base the recommendations exclusively on the matters officially noticed and the

evidence presented.

(1) Mitigating factors may include but are not limited to the following:

- (a) The absence of a prior disciplinary record;
- (b) The absence of a dishonest motive;
- (c) The absence of a selfish motive;
- (d) Personal or emotional problems;
- (e) A timely good faith effort to make restitution or to rectify consequences of misconduct;
- (f) Full and free disclosure to the division staff, the board or the hearing officer;
- (g) A cooperative attitude toward any proceedings;
- (h) Inexperience in the practice of the profession or occupation;
- (i) Character or reputation;
- (j) Physical or mental disability;
- (k) Physical or mental impairment;
- (l) Delays in the disciplinary proceedings;
- (m) Interim rehabilitation;
- (n) Imposition of other penalties or sanctions;
- (o) Remorse; or
- (p) The remoteness of prior offenses.

(2) Aggravating factors may include but are not limited to the following:

- (a) A prior disciplinary record;
- (b) A dishonest motive;
- (c) A selfish motive;
- (d) Multiple offenses;
- (e) Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with this section, the applicable section of ACJA, court rules or orders of the hearing officer;
- (f) Submission of false evidence, false statements or other deceptive practices during the discipline process;
- (g) Refusal to acknowledge wrongful nature of the conduct;
- (h) Vulnerability of the victim;
- (i) Substantial experience in the profession or occupation; or
- (j) Indifference to making restitution.

- c. The disciplinary clerk shall distribute the hearing officer recommendation report to all parties and the board by United States mail to the last address on file with the division staff. Distribution is accomplished in accordance with Rule 5, Rules of Civil Procedure by deposit in the United States mail.
- d. The board may adopt or modify the hearing officer's recommendation report in whole or in part.
- e. The board may remand the matter to the hearing officer in whole or in part, designating

the issues remanded. The board shall provide the hearing officer with an order identifying the issues remanded.

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. A party to the hearing may request a rehearing of the matters involved in the hearing.~~ The requesting party shall file the written request with the hearing officer and the ~~executive office of the AOC, disciplinary clerk~~ within fifteen days after the disciplinary clerk any order made pursuant to the hearing was mailed or delivered to the person entitled to receive the order has distributed the hearing officer's recommendation report to the parties pursuant to subsection (H)(22)(c). 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~~ ten days of service. The hearing officer may grant a rehearing of the matters involved in the hearing and shall make the decision to grant or deny the request within ten days of the date the response for rehearing is filed.

24. Possible Actions for Resolution of a Complaint.

a. Upon completion of an investigation concerning alleged acts of misconduct or violations by a certificate holder, which may or may not include a formal interview, informal or formal disciplinary proceedings, or a hearing, ~~in addition to any sanctions specified in the program specific section,~~ the ~~director~~ board shall do one or more of the following:

~~(3)(1)~~ Order Request the program coordinator and program division staff to conduct further investigation;

(2) Refer the complaint to another entity with jurisdiction;

~~(4)(3)~~ Determine no violation exists and dismiss the complaint with or without prejudice;

(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.~~

(4) 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)(5)(c)(1)(g);

(5) Make Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules, this section, or the applicable ACJA specific sections or subsection (H)(4)(b)(6) and order that an emergency summary suspension is ~~necessary~~, pursuant to subsection ~~(H)(5)(9)(d)~~;

(6) Make Enter a finding the certificate holder has violated any of the provisions of the

statutes, court rules, this section, the applicable ACJA sections or subsection ~~(H)(1)(b)(6)~~ 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 ~~the acts of misconduct or violations~~ by consent order or other negotiated settlement ~~between the parties~~;
- (d) Place specific restrictions on a certificate ~~with specified conditions~~;
  
- (e) Place the certificate holder on probation for a specified set period of time under specified conditions;
- (f) Mandate additional training for the certificate holder;
- (g) Issue a cease and desist orders pursuant to subsection (E)(6);
- (h) Order suspension of a certificate ~~ion~~ for a set period of time with specific conditions for reinstatement;
- (i) Order revocation of a certificate ~~ion~~ with specific conditions for reinstatement;
- (j) Assess costs associated with these ~~activities~~ investigation and disciplinary proceedings; or
- (k) Impose civil penalties associated with these ~~activities~~ investigation and disciplinary proceedings.

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. While the conduct does not warrant any disciplinary action, the board believes the certificate holder should modify or eliminate certain practices and continuation of the activities leading to the documentation regarding the conduct being submitted to the board may result in future board action against the certificate holder. A certificate holder may file a response with the director board within no later than fifteen days after receipt the date of an the advisory letter. The certificate holder's response is confidential and division staff shall file the response in the complaint file.
- (2) An informal disciplinary proceeding may result in ~~imposition of sanctions~~; a letter of concern but ~~the sanction~~ may not include ~~be~~ a censure, restrictions on a certificate, probation, mandated additional training, suspension or revocation of the certificate; or imposition of civil penalties or costs. A letter of concern is a written informal discipline sanction and is not confidential or appealable. A certificate holder may file a response to the letter of concern no later than fifteen days after the date of the letter of concern. The certificate holder's response is public and division staff shall file the response in the complaint file.
- (3) ~~A letter of concern is an informal sanction;~~
- (4) ~~Sanctions resulting from informal disciplinary proceedings are not appealable and are not confidential;~~
- (5)(3) The board may impose Iinformal 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 board shall make the final decisions or orders in writing and shall include findings of fact and conclusions of law, separately stated. The director board shall make findings of fact by a preponderance of the evidence, based exclusively on the evidence and on matters officially noticed and consider mitigating or aggravating factors pursuant to subsections (H)(22)(b)(1) and (2). 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.~~ Notice of Board's Final Decision. Upon final order of the board regarding a certification or complaint matter, division staff shall provide written notice of the board's final decision and order:

~~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.~~

a. Regarding an initial or renewal certification matter, to the applicant or certificate holder within ten days, by deposit in the United States mail addressed to the last known address on file with division staff. 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 the date of revocation; and until the person again qualifies in accordance with the applicable provisions of this section and the program specific section.~~

b. Regarding suspension or revocation of certification to the certificate holder by certified mail, return receipt requested, within two days, addressed to the last known address on file with division staff pursuant to subsection (H)(1)(i)(8). Division staff shall ensure the order of emergency summary suspension is immediately served on the certificate holder pursuant to subsection (H)(9)(d)(2). Division staff shall send any other disciplinary order by the board, not involving suspension or revocation of certification, to the certificate holder within ten days by deposit in the United States mail addressed to the last known address on file with division staff, pursuant to subsection (H)(1)(i)(7). Notice by mail is complete upon deposit in the United States mail.

c. Regarding a complaint matter, to the complainant within ten days, pursuant to subsection H(1)(i)(7), by deposit in the United States mail addressed to the last known address on file with division staff. Notice by mail is complete upon deposit in the United States

mail.

27. ~~Judicial Review~~ Filing of Special Action. Decisions of the ~~director~~ board pursuant to this section and the applicable ACJA sections ~~program specific section~~ are final. Parties may seek judicial review through a petition for a special action within 35 days after entry of the board's final order. The petition for special action shall be pursuant to the Arizona Rules of Procedure for Special Actions.

**I. Policies and Procedures for Board Members.** The purpose of a board is to assist the supreme court in the protection of the public through the certification and oversight of certificate holders, to ensure conformance by certificate holders to the highest ethical standards and performance of responsibilities in a professional and competent manner.

1. Establishment of Boards and Appointment and Terms of Members. The establishment of the boards and the appointment and terms of members are specified in subsections (D)(5)(a) and (b).

2. Role and Responsibilities of Board Members. In addition to the provisions of subsection (D)(5)(c), the following provisions apply:

a. Role. The primary role of the board members is protection of the public through the fair and impartial application of the applicable section of the ACJA and court rules. Members should consider the views and interests of regulated professionals and the profession; however, members shall balance this against the member's primary role of protection of the public.

b. Attendance. Members shall attend and actively participate in board meetings and assist with the administration of board affairs. Regular attendance by each member of the board helps ensure full contribution of all members. Therefore, members are required to regularly attend and participate in board meetings. The board chair shall address a board-attendance issue regarding a member as follows:

(1) A board-attendance problem occurs if a member:

(a) Has two consecutive un-notified absences where the member did not provide advance notification to division staff the member would be absent;

(b) Has three consecutive absences where the member did provide advance notification to division staff the member would be absent; or

(c) Misses one third of the total number of regular board meetings in a twelve month period.

(2) Upon determination of a board-attendance problem, the chair shall discuss the issue with the member. The chair shall share the member's response at the next board meeting and the board shall consider the appropriate action to take regarding the member's membership on the board. If the board decides to recommend to the chief justice for the termination of the membership of the member, the chair shall inform the member of the board's decision. The chair shall request a letter of resignation

from the member and the return of any board materials. The board shall promptly initiate the process for the recruitment and recommendation of a new member.

- c. Expenses. Members shall not receive compensation for their services, but may receive reimbursement for their travel and other expenses incidental to the performance of their duties, pursuant to the adopted state guidelines.
- d. Gifts and Awards. A member shall not solicit or accept any gift or award from any professional certified individual, business or association, including a testamentary gift, unless the member or other recipient of the gift is related to the provider of the gift or award. For the purposes of this paragraph, “gift” includes money, services, travel, food, or entertainment and “related persons” includes a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the member maintains a close, familial relationship. It is acceptable for the board or a member to accept an award, in recognition of service, from an association not directly related to their respective professional association, for example, the American Judicature Society.
- e. Contractual Arrangements. A member shall carefully consider entering into any contractual arrangement with any professional certificate holder for the provision of any services related to the associated profession. The member shall consider whether such an association could result in a conflict of interest, or the appearance of a conflict of interest.
- f. Referrals. A member shall carefully consider whether to recommend the services of any professional certificate holder to a member of the public or to accept a referral from a regulated professional or regulated business. The member shall consider whether a referral could result in a conflict of interest, or the appearance of a conflict of interest.
- g. Professional Associations. A member shall not serve simultaneously as an officer or board member of a professional association for the regulated profession and as a member of the board.

### 3. Organization.

- a. Chair. The chief justice shall designate the chair of the board, unless otherwise designated by the applicable ACJA section. If the chair resigns or ceases to be a member of the board, the chief justice shall appoint another person, either an existing member of the board or a new appointee, to serve as chair. The chair shall perform the duties normally associated with the office and shall preside over all general meetings of the board.
- b. Vice Chair. The board shall elect a vice chair from among the appointed members of the board. The vice chair shall serve in the capacity as vice chair for a specified term. If the vice chair resigns or ceases to be a member of the board, the board shall vote to elect a new vice chair from among the existing members. The vice chair shall act as chair in the absence of the chair.

c. Subcommittees. The chair or the board may establish such subcommittees as deemed necessary to adequately serve the needs of the applicable program. Each subcommittee shall consist of a chair to be named by the board chair or the board and members who volunteer and are approved for service. The chair or the board may appoint additional individuals who are not appointed members of the board to a subcommittee. A subcommittee shall exist only so long as it serves a current, useful purpose. A subcommittee may be dissolved by the board chair or the board if it is deemed it has fulfilled its purpose.

#### 4. Meetings.

a. Regular Meetings. The board shall meet no less than six times per year for regular meetings, unless other applicable ACJA sections state otherwise. The board chair may call additional regular meetings at the discretion of the board chair.

b. Emergency Meetings. The board chair may call emergency meetings of the board upon a showing of good cause, including consideration of the emergency suspension of a certificate pursuant to subsection (H)(5)(c)(6).

c. Public Notice. All meetings shall be publicly noticed and open to the public, in compliance with ACJA § 1-202.

d. Quorum. The board shall have a quorum for all official actions. A quorum consists of a majority of the board.

#### 5. Actions.

a. Voting. A majority of the votes shall decide motions arising at any meeting of the board. All members may vote on any motion. All votes shall be taken by voice vote, signified by “aye” or “nay.” Any board member may require a recorded vote, to include the number of “ayes” or “nays” and the specific vote of the member requesting the recorded vote. In the case of an equality of votes the motion is defeated. A declaration by the chair a motion has carried and an entry to that effect in the minutes is admissible in evidence as prima facie proof of the fact without proof of the number or proportion of the votes recorded in favor of or against such resolution being necessary.

b. Recusal. A member shall recuse from discussing and voting on an issue pertaining to an applicant or certificate holder who is related to the member or in any other situations where there is a conflict of interest, or may be the appearance of a conflict of interest.

(1) For the purposes of this subsection:

(a) “related” includes the relationships of parent, child, sibling, spouse or cohabitant;

(b) “conflict of interest” includes situations where the member has a direct or indirect substantial interest in any contract, sale, purchase or service to the board or the AOC or who has, or whose relative has, a substantial interest in any decision of the board,

or the existence of any situation where there is, or may be an appearance that the relationship is one that would affect the member's ability to be impartial. The fact a

member or the entire board has been named in a lawsuit by an applicant or certificate holder does not automatically constitute a conflict of interest requiring the recusal of the member in an issue relating to the applicant or certificate holder.

(2) The purpose of this recusal provision is to remove or limit the possibility of personal influence which might bear upon a member's official decision, or provide the appearance of any impropriety in the member's decision.

(3) A member may seek legal advice regarding specific conflicts of interest or other ethical issues pertaining to membership and action from the AOC legal counsel.

(4) The member shall recuse at the beginning of the discussion of the issue by the board, or at the first instance the member realizes the conflict. The member shall not participate in the discussion by the board and shall leave the meeting room during board discussion of the issue in executive session. The recusal shall be noted in the official minutes of the meeting.

c. A member shall not designate a proxy for attendance or voting.

6. Staff. Under the direction of the chief justice, the director shall provide staff to assist and support the board and may conduct or coordinate research as recommended by the board.

7. Communications.

a. Board members shall not engage in improper ex parte communications with a hearing officer, other board members or division staff as to the merits of a case regarding an individual or business entity application for certification or a complaint alleging acts or misconduct or violations of statutes, court rules, or the ACJA that have been filed against a certificate holder. Except as may be provided in the applicable sections of the ACJA, all communications among a board member, division staff or a hearing officer in these situations shall occur during board meetings.

b. AOC legal counsel shall provide legal advice for the board. The Office of the Arizona Attorney General provides legal representation to the board as an entity or individual member, consistent with the Arizona constitution and statutes. AOC legal counsel shall coordinate with the Attorney General for representation.

c. Board members shall not engage in ex parte communications with applicants for certification or certificate holders regarding the board's action or potential action. Members shall not engage in ex parte communications with any other person, including the attorney of record of an applicant or certificate holder.

d. Board members should refer all contacts from the media to the AOC public information

officer.

- e. Board members shall maintain the confidentiality of all information provided to the board during confidential executive sessions of the board and other documents that are confidential pursuant to court rules or law.
- f. Board members should always be cognizant they are seen as representatives of the board and the program at professional gatherings and in public settings, including, for example, at the legislature. Board members should not speak for the board unless specifically authorized to do so. A board member shall make the following statement, either verbally or in writing, or both, “the views and opinions expressed are my own and do not represent the views or opinion of the board, the AOC or the Arizona Supreme Court.”
- g. Board members shall refer inquiries from the public, certificate holders, applicants for certification and other governmental and private entities regarding matters within the board’s jurisdiction to division staff. Division staff, in coordination with the board chair, shall refer appropriate issues to the full board at a regularly scheduled board meeting.
- h. These provisions apply to all forms of communication, including verbal, written and electronic.