EXECUTIVE SUMMARY

Proposed Changes to ACJA § 7-202 (Fiduciaries)

Reorganization

- Following the adoption of ACJA Part 7, Chapter 2, Article 1 (ACJA § 7-201 through 7-201.39), the General Requirements for all Certification and Licensing Programs, this proposal restyles and reorganizes ACJA § 7-202 to conform to the changes made with the addition of Article 1.

- The existing ACJA § 7-202 is a single, 34-page section. This proposal adds a new Article 2 (Fiduciaries) to ACJA Part 7, Chapter 2 (Certification and Licensing Programs). Within the new Article 2, the existing § 7-202 is broken into the following §§ 7-202 through 7-202.28:

7-202	Scope	7-202.14	License Renewal
7-202.01	Definitions	7-202.15	Notice Requirements
7-202.02	Jurisdiction	7-202.16	Fiduciary Code of Conduct
7-202.03	Administration	7-202.17	Relationship to Court
7-202.04	Fiduciary Board	7-202.18	Decision-Making
7-202.05	Individual Licensing Eligibility	7-202.19	Conflict of Interest
7-202.06	Trainees	7-202.20	Guardian of Person
7-202.07	Examinations	7-202.21	Medical Decisions
7-202.08	Initial Licensing; Application Process	7-202.22	Managing Estate of Protected Person
7-202.09	Exemptions	7-202.23	Authorized Services
7-202.10	Licensing Denial	7-202.24	Prohibited Conduct
7-202.11	Licensee Affiliation	7-202.25	Fiduciary Compensation
7-202.12	Licensed Entity; Designated Principal	7-202.26	Resignation or Termination
7-202.13	Continuing Education	7-202.27	Discipline
		7-202.28	Fee Schedule

- A.R.S. § 14-5651(A) provides for supreme court administration of the fiduciary program, the adoption of rules for its implementation, and the minimum content of the rules. The proposal includes the statutory elements but does not repeat all the statutory directives.

- The draft proposal makes major changes to the order of existing content. The Legislative Version (showing deletions as stricken and new text as underlined) of the draft contains large chunks of deleted text and text that appears to be all new when deleted text appears in its new location. The relocated text has also been revised, so in many cases a blue box has been inserted below the new text showing how the existing text has been modified. As a result, the Legislative Version is a lengthy 92 pages.

- The Legislative Version also contains many comments in the margins noting, for example:
  - Where “new” text was previously located in the existing § 7-202; and
  - The new location of deleted text.

Restyling

- The proposed sections redraft existing language in plain English and according to updated standards for writing rules or legislation.
- Significant duplication is eliminated.
- Antiquated language is updated.
- Ambiguous words are eliminated (or at least avoided)
- Defined terms are used to avoid unnecessary repetition and eliminate the problems associated with saying the same thing in a different way each time.

— New Sections —

7-201.02: Scope

- Explains the relationship between Articles 1 and 2.

7-202.01: Definitions

- Existing definitions are restyled consistent with Article 1. Many of the existing definitions are revised for clarity.
- Several existing definitions are revised to correct statutory citations.
- Definitions of currently undefined terms are added.
- Some terms defined in the current text of § 7-202 are relocated to this section.

7-201.02: Jurisdiction

- Cleans up language; makes no substantive changes.

7-201.03: Administration

- Cleans up language; makes no substantive changes.

7-202.04: Fiduciary Board

- Cleans up language; makes no substantive changes.

7-202.05: Individual Licensing Eligibility

- Simplifies by deleting repetitive language from the professional requirements and relocating it to § 7-202.06 (Trainees).
- Simplified by numbering each of the professional education, training, and experience requirements for easier reference.
- Provisions about examinations moved to § 7-202.07 (Examinations).

7-202.06: Trainees

- Includes the rules for satisfying the work experience requirement.
- Includes the existing limitations on trainee activity.
- Attempts to consolidate the requirements for trainee supervision here.
- A comment on p. 11 of the Legislative Version notes an inconsistency in the existing § 7-202 about who may supervise a trainee.
    - *Question: Are licensed fiduciaries or designated principals the only possible trainee supervisors or may trainees also be supervised by a bank trust, trust company officer, or a licensed attorney practicing in specified areas? In this context, when the existing code uses "licensed attorney," does it mean "an attorney licensed to practice law" or "an attorney who is also a licensed fiduciary?"*

7-202.07: Examinations

- Reorganizes; makes no substantive changes.

7-202.08: Initial Licensing; Application Process

- **Change:** This draft proposes deletion of the existing § 7-202(F)(7) provision that a trainee may apply after completing 1 year of full-time equivalent service as a trainee if the trainee is otherwise eligible for licensing under ACJA § 7-202.05(B).
    - *Rationale: If the applicant still must complete the applicable work requirement, then the existing language doesn't make sense under many of the existing professional education and experience options. For example, after one year, an applicant might still need to complete 2 years of work experience. The board may grant an exception as to the period of time over which the work experience may be gained, but it can't shorten the work experience requirement under current 7-202(E)(1)(a)(3) and proposed 7-202.05(B)(2).*
    - *Does the 1-year application eligibility need to be included and, if so, why? If it is included, how should the above-described inconsistency be addressed?*

- **Change:** A change is requested by CLD in proposed ACJA § 7-202.27(B)(2)(c) to prohibit a fiduciary whose license has been revoked from having an ownership interest in a fiduciary business. The change in this section would require an entity application to be accompanied by a list of all persons with an ownership interest in the business entity applicant.

  - *Rationale: Producing a list of entity owners would allow CLD to determine whether any are former licensees whose licenses were revoked.*

7-202.09: Exemptions

- Cleans up language; makes no substantive changes.

7-202.10: Licensing Denial

- Cleans up language; makes no substantive changes.

7-202.11: License Affiliation

- Cleans up language; makes no substantive changes.

7-202.12: Licensed Entity; Designated Principal

- Cleans up language; makes no substantive changes.

7-202.13: Continuing Education

- Substantially revised for clarity; reorganized; no substantive changes.

7-202.14: License Renewal

- Cleans up language; makes no substantive changes.

7-202.15: Notice Requirements

- Consolidates notice requirements from various locations in existing § 7-202.
- **Change:** A change requested by CLD is included here to require notice when a fiduciary credits an account to comply with a court order.
  - *Rationale: Fiduciaries are already required to give notice when they are ordered by the court to reimburse some or all fees or expenses. This change is the flip side of the existing notice so that the division is aware of when the court-ordered reimbursement occurs.*

7-202.16: Fiduciary Code of Conduct

- The existing Code of Conduct is substantially reorganized.
- The substantive standards included in this section are general in nature. Proposed § 7-202.16(C) provides that 10 additional sections are part of Arizona's Fiduciary Code of Conduct. The proposal relocates much of the current § 7-202(J) to these other sections.

C. Additional Standards. In addition to the standards of conduct in this section, the Fiduciary Code of Conduct includes the following standards governing:

1. A fiduciary's relationship with the court under ACJA § 7-202.17;
2. Decision-making under ACJA § 7-202.18;
3. Conflict of interest, including providing non-fiduciary services, under ACJA § 7-202.19;
4. Guardianship of the person under ACJA § 7-202.20;
5. Medical decisions under ACJA § 7-202.21;
6. Managing the estate of a protected person under ACJA § 7-202.22;
7. Authorized services under ACJA § 7-202.23;
8. Prohibited conduct under ACJA § 7-202.24;
9. Fiduciary compensation under ACJA § 7-202.25; and
10. Resignation or termination under ACJA § 7-202.26.

- The current § 7-202(J) is a bit of a jumble. The proposal breaks it into a total of 11 sections (§ 7-202.16 and the sections identified in proposed § 7-202.16(C). The subject-matter focus of these sections will make it easier to locate information.

- Once § 7-202(J) was reorganized by topic, some gaps became apparent. The National Guardianship Association's (NGA's) *Standards of Practice* (5th Ed., 2022) was used as guidance in reorganizing by topic and filling gaps, but it was not fully incorporated.
  - The Arizona Fiduciary Association notes that Arizona licensed fiduciaries are bound by § 7-202(J) but notes that the NGA is an excellent resource.
  - Any Arizona licensed fiduciaries with National Certified Guardian or National Master Guardian credentials are bound by the NGA Standards of Practice as well.

7-202.17: Relationship to Court

- This section primarily reorganizes and redrafts existing requirements.

7-202.18: Decision-Making

- This section primarily reorganizes and redrafts existing requirements.
- Revised to better articulate the standards for decision-making (when to make decisions based on the ward's or protected person's preferences and when to make a best-interest decision). The current code references both but does not adequately describe what each entails.

7-202.19: Conflict of Interest

- Redrafts existing requirements to better define conflict of interest. The existing code is muddled in this regard. For example, § 7-202(J)(2)(b)(1) tells fiduciaries to avoid self-dealing and conflict of interest. In fact, self-dealing *is a conflict of interest*. The existing code also prohibits conduct without stating that it is prohibited because it is a conflict of interest.

- **<u>Change:</u>** The proposal includes providing non-fiduciary services in this section. CLD requested that the revisions better address that it is a conflict of interest when a fiduciary provides non-fiduciary services (or at least an appearance of a conflict) and comes with lots of inherent danger.
  - *Rationale: The proposal better describes a complete process for obtaining court approval to provide non-fiduciary services and includes factors relevant to that determination. This is the Code governing fiduciary conduct rather than judicial conduct, but the proposed § 7-202.19(C)(2)(c) advises fiduciaries to address a list of factors in a request for approval that would be relevant to the court's decision, including factors listed in A.R.S. § 14-5109(C). A corresponding Probate Rule amendment could be proposed in January 2027.*

- Comments to proposed § 7-202.19(D) address two questions about fiduciary's giving notice to the court about conflicts that should be reviewed by the board and regulated community before finalizing the draft.

7-202.20: Guardian of Person

- This section primarily reorganizes and redrafts existing requirements.
- Incorporates A.R.S. § 14-5312(A)(4) and (6) as to the guardian's responsibilities if there is also a conservator and when there is no conservator.

7-202.21: Medical Decisions

- Although this section primarily reorganizes and redrafts existing provisions, it includes some helpful clarification from the NGA Standards.

7-202.22: Managing Estate of Protected Person

- Although this section primarily reorganizes and redrafts existing provisions, it includes some helpful clarification from the NGA Standards.

- The existing Code states a standard of care for a conservator that is at odds with statutes (A.R.S. §§ 14-5417, 14-10804, and 14-10806). The current § 7-202(J)(5) introduces different language for how a conservator should conduct themselves ("must exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence in the discharge of all duties"). The current 7-202(J)(5) uses some statutory language but fails to articulate a standard of care. It does not appear to be trying to say something different from what is in statute, so it is unwise to deviate from the statutory standard of care and confuse fiduciaries or the public. The proposed § 7-202.22(B)(1) incorporates the statutory standard.

- The NGA Standard helped round out a conservator's duties in managing assets, income, and liabilities in proposed § 7-202.22(D).

7-202.23: Authorized Services

- This section primarily reorganizes and redrafts existing requirements.
- CLD, the regulated community, and board need to weigh in on whether the list of documents that a fiduciary may file is complete.

7-202.24: Prohibited Conduct

- This section primarily reorganizes and redrafts existing requirements.
- **Change:** Proposed § 7-202.24(D)(2) addresses a request from CLD to prohibit a fiduciary from operating under a business name unless the business is a licensed entity.

7-202.25: Fiduciary Compensation

- This section primarily reorganizes and redrafts existing requirements.

7-202.26: Resignation or Termination

- **Change:** The existing Code does not address fiduciary conduct in connection with a fiduciary's resignation or termination. CLD has encountered serious difficulties with fiduciaries who have agreed to surrender their license in lieu of discipline but who then continue to practice for an extended period while they find successors or close out their existing cases. They claim they can't surrender their licenses until final reports are done. They appear to be relying on Rule 40(b), Arizona Rules of Probate Procedure.
    - *Rationale: Rule 40(b) seems to have been misapplied in these cases. It states: "Before resigning or having the court terminate the responsibilities of a court-appointed fiduciary, the fiduciary must comply with statutory requirements for withdrawal, including the filing of final reports and accounts."*
    - *There is a difference between (1) a fiduciary who resigns from a case or whose duties are ending because the guardianship or conservatorship is being terminated and (2) a fiduciary whose license is involuntarily surrendered to avoid discipline. The proposal makes this distinction in § 7-202.26(C)(2). A corresponding Probate Rule amendment could be proposed in January 2027*
- **Changes:** CLD made two requests in this area:

  - That the new Code provides that when a fiduciary's authority terminates, the fiduciary must promptly transfer the ward's or protected person's assets and records. This is addressed in proposed § 7-202.26(A)(2).

  - That the Code include something akin to the appointment of a conservator for a lawyer's files and client records under Supreme Court Rules 66-68. Proposed § 7-202.26(D) provides that the board may authorize filing a petition with the presiding probate judge to act as a conservator of a fiduciary's client files and records in an appropriate case.

7-202.27: Discipline

- This section reorganizes and redrafts existing provisions.

- **Change:** CLD requested that a person whose license has been revoked or involuntarily terminated not be allowed to own a licensed entity or serve as a designated principal. This change is made in proposed § 7-202.27(B)(2)(c).

- **Change:** ACJA 7-201.18 now provides that someone seeking reinstatement of a license after suspension or revocation must comply with any requirements set in the article governing the profession or occupation. Payment of the reinstatement application fee is certainly one, but are there others? A placeholder for inserting such requirements is inserted in § 7-202.27(C) with some suggestions. CLD and the board need to weigh in before the draft is finalized.

7-202.28: Fee Schedule

- This section reorganizes and redrafts the existing provision.