

## **Proposed Private Process Server Program**

### ***PROPOSED MODEL FOR PRIVATE PROCESS SERVERS***

#### **Section I: Private Process Server, Appendix A, Code of Conduct.**

##### **PREAMBLE:**

The purpose of this Code of Conduct is to establish minimum standards for performance by private process servers and to ensure they conduct the service of process in a professional manner.

**Standard 1. Rules and Applicable Laws.** The private process servers shall perform all services and discharge all obligations in accordance with current Guam and federal law, Guam Rules of Civil Procedure, administrative orders and this code section as adopted by the Supreme Court of Guam governing the certification of private process servers.

The private process server shall promptly file an affidavit of service or certificate of service or return the un-served documents.

**Standard 2. Skills and Knowledge.** The private process server shall demonstrate adequate skills and knowledge to perform the work of a private process server, and shall seek training opportunities to maintain professional competency and growth.

- a. The private process server has an obligation to have knowledge and keep informed of all current and applicable laws regarding the service of process;
- b. The private process server has a responsibility to maintain a working knowledge of proper methods of service;
- c. The private process server shall possess the necessary verbal and written communication skills sufficient to perform the private process server role;
- d. The private process server shall manage service proficiently. Skills required include those necessary to perform service, maintain records and communicate with the client in a timely fashion;
- e. The private process server shall keep the client reasonably informed about the status of the service and promptly comply with reasonable requests;
- f. The private process server shall ensure all affidavits and certificates prepared by the private process server are complete, accurate and understandable and are timely filed with the court;

**Standard 3. Ethics.** The private process server shall perform services in a manner consistent with legal and ethical standards.

- a. The private process server, having located the sought-after party or persons receiving process for those persons intended for service, shall perform the service of process in

- a professional manner, utilizing sound judgment and avoid rudeness and unprofessional conduct.
- b. The private process server shall present service in a nonjudgmental manner;
  - c. The private process server shall not misrepresent the private process server's qualification, fees, or any other information relating to the role of the private process server.
  - d. The private process server shall not utilize certification in any manner to gain access to information or services for purposes other than those of the Private Process Server Program.
  - e. The private process server shall maintain the best interests of the client by maintaining a high standard of work and reporting to a client the full facts determined as a result of the work and effort expended whether they are advantageous or detrimental to the client.

## JUDICIAL COUNCIL OF GUAM

### Certification and Licensing Programs: Private Process Server

**A. Definitions.** In this code section the following definitions apply:

“Administrative Director” means the Administrator of the Courts, Judiciary of Guam, or the Administrator’s designee.

“Administrative Office” means the Administrative Office of the Courts, Judiciary of Guam.

“Code Section” means the referenced provision of the Guam Code Annotated.

“Complainant” means a person or organization that initially files a complaint regarding the conduct of a private process server. The complainant is not a party to the proceeding.

“Days” are counted as in the Guam Rules of Civil Procedure.

“Formal Charges” means a document setting forth specific acts of misconduct by a certified private process server upon a determination of probable cause.

“Formal Disciplinary Proceedings” means filing of formal charges specifying misconduct by a certified private process server. Formal disciplinary proceedings commence after a finding there is probable cause to believe a private process server has committed a violation of the administrative code, statutes or court rules pertaining to service of process that if true, would warrant a public sanction. The public sanction could include restrictions on the certificate, or suspension or revocation of the certificate.

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

“Informational Disciplinary Proceedings” means resolution of a complaint prior to the filing of formal charges. An informal disciplinary proceeding may result in imposition of sanctions, but the sanction may not include restrictions on a certificate, suspension or revocation of a certificate.

“Presiding Judge” means the presiding judge of the Judiciary of Guam or the presiding Judge’s designee.

“Private Process Server” means a person, duly appointed or registered pursuant to the requirements in 7 GCA § 14104 and these rules as promulgated by the Judicial Council of Guam

“Program Coordinator” means the staff appointed by the Administrator of the Courts to administer the program.

“Provisional Certification” means a temporary certificate issued by the Superior Court of Guam which expires 120 days after the granted.

“Revoked” means the permanent invalidation or cancellation of a private process server’s certificate.

“Standard Certification” means a certificate issued by the Superior Court once an applicant meets all the requirements for certification of a private process server.

“Suspended” means the private process server’s certificate is not revoked, but the certificate holder is not permitted to exercise the privileges of the certificate for a set period of time as the result of a disciplinary action.

“Valid” means a certificate issued by the Superior Court that is currently in effect and not suspended or revoked.

**B. Applicability.** This code sections applies to the certification of private process servers pursuant to 7 GCA § 14104 and the Guam Rules of Civil Procedure. This code section governs private process server certification and discipline of all private process server certification separately and without reference to the criminal laws of Guam. For uniformity, consistency and ease of reading the term “certification” refers to either certification or registration.

**C. Purpose.** For eligibility to act as a private process server in Guam, all persons shall obtain certification and comply with the requirements of 7 GCA § 14104,<sup>1</sup> the Guam Rules of Civil Procedures, and these Rules Governing the Certification of Private Process Servers as adopted by the Judicial Council.

**D. Administration.**

1. Roles and Responsibility of the Administrator of the Courts. The Administrator of Courts shall have the authority to have to approve or disapprove matter of

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<sup>1</sup> § 14104. Who May Serve Summons; Certificate.

The summons may be served by any peace officer where the defendant is found, or by any other person over the age of eighteen (18) not a party to the action. A copy of the complaint must be served, with the summons, upon each of the defendants. When the summons is served by a peace officer, it must be returned, with his certificate of its service, and of the service of a copy of the complaint, to the office of the clerk from which it issued. When it is served by any other person, it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, where such copy is served.

administration of the Private Process Server Program that involves the expenditure of program funds. The Administrator of Courts may vest in any other person, acting in the director's name and by delegated authority, the authority to exercise or discharge any power, duty or function, normally belonging to the Administrator of Courts under these regulations, whether ministerial or discretionary.

2. Roles and Responsibilities of Program Coordinator. The Administrator of Courts shall designate a Program Coordinator. The Program Coordinator is responsible for the administration of the Private Process Server Program in compliance with the law, Guam Rules of Civil Procedure, and Judiciary of Court administrative orders and this code section. The program coordinator shall provide updates to the Administrator of Courts; make recommendations regarding matters pertaining to certification, complaints and investigations; and all other matters relevant to certified private process servers.
  - a. The program coordinator shall perform tasks of administration of the Private Process Server Program to assist in the administration of the program. The Program Coordinator shall provide updates to the Administrator of Courts.
  - b. The Program Coordinator shall maintain a list of certified private process servers and shall post this list on the Judiciary's website. The Judiciary website shall include each certificate holder's name and certificate number. The Program Coordinator may charge for the costs of providing copies of the certification list or any other public records of the program.
  - c. The Program Coordinator shall provide a quarterly report listing of all complaints, investigations pending completion, and informal and formal disciplinary proceedings to the clerk of court who will maintain the information.
  - d. The Program Coordinator shall notify the Administrator of Courts and Clerk of the Superior Court if it appears a private process server has violated any of these rules.
3. Role and Responsibilities of the Clerk of Court of the Superior Court. The Clerk of the Superior Court is responsible for distributing and accepting applications, maintaining records, including the register of certified process servers under this rule, accepting Special Proceedings Case fees, coordinating the receipt of application materials for the Program Coordinator, notifying the Program Coordinator of certificates issued, changes of addresses, and renewals. The Clerk of the Superior Court shall maintain a current certification list of all private process servers of certificate holder status on a form approved by the director.

- e. The Clerk of the Superior Court may assign any duties and responsibilities to staff for the duties assigned under these rules. On the second day of January of each year, the clerk shall file a letter with the Program Coordinator, naming the staff assigned responsible for administering the Private Process Server Program along with a current address, phone number and e-mail address of each staff member.
  - f. The Clerk of the Superior Court shall report quarterly to the Program Coordinator all additions, deletions and revisions in the certification list. The Clerk of the Superior Court shall maintain a current certification list of all private process servers of certificate holder status on a form approved by the Program Coordinator.
  - g. The Clerk of the Superior Court shall provide a quarterly report listing all complaints, investigations pending completion and informal and formal disciplinary proceedings to the Program Coordinator who will maintain the information for use as needed.
  - h. The Clerk of the Superior Court shall notify the Administrator of Courts if it appears a private process server has violated this code section.
3. Role and Responsibilities of the Program Coordinator. The Program Coordinator is responsible for reviewing all application materials including criminal history information. The Program Coordinator is also responsible for recommending granting or denying certification to private process servers and recommending granting or denying reexamination on a previously failed examination. The Program Coordinator receives complaints pursuant to these rules, and investigates, initiates and adjudicates disciplinary proceedings.

**E. Initial Certification:**

1. Exemptions from Certification. The following persons are exempt from the certification requirements:
  - a. Any person who is a non-party to the action who is qualified to serve process under Rule 4( c) of the Guam Rules of Civil Procedure.
  - b. Any person serving a subpoena pursuant to Rule 45, Guam Rules of Civil Procedure.
2. Qualifications for application. Any person 18 years or older and having been a resident of Guam for one year and who has not been convicted of a crime of dishonesty or moral turpitude or for which the punishment exceeds one year may apply for certification.

a. Qualifications for Individual Certification. To become certified or eligible for certification an applicant shall meet the eligibility requirements and fulfill all the requirements of 7 GCA § 14104, Guam Rules of Civil Procedure Rule 4(c)(2) and these rules, and provide the following information:

1. [Applicant] has been a bona fide resident of the Territory of Guam for at least one year immediately preceding the application .... For certification; and
2. [Applicant] shall be not less than eighteen (18) years if age; and
3. Applicant has not been convicted of a felony or a misdemeanor involving fraud or dishonesty.

b. Government Employee Process Servers.

1. An individual who serves process entirely within the scope of the individual's responsibility as a government employee shall apply for certification and demonstrate the ability to pass the examination and meet certification criteria. Government employee process servers are not subject to application fees other than the fees for the training.
2. A government employee process server may carry any employer-issued identification that accurately identifies the employee as a government employee process server in addition to the identification card issued by the Judiciary of Guam.
3. Government employee process servers who serve process in any capacity outside the scope of employment as a government employee process server shall obtain full private certification pursuant to these rules and shall follow all policies that apply to private process servers when serving process outside the scope of employment as a government employee process server.

c. Procedures for Application. To apply for certification, an applicant shall:

1. Provide a completed application for certification on an approved form obtained from and filed with the Clerk of the Superior Court. The applicant shall sign the application and have it duly verified under penalty of perjury;
2. Execute a Declaration stating that the applicant is and was a legal resident of the Territory of Guam for at least one year prior to application and has continually resided in Guam during this time

period. The affidavit may include relevant language stating the applicant understands the need to be available to testify and that providing testimony regarding the service of process is a common and inherent duty to this profession;

3. Execute a declaration stating that the applicant will well and faithfully serve process in accordance with the law, and otherwise comply with all laws of Guam and regulations of the Judiciary of Guam.

4. Pass an examination administered by the Judiciary of Guam, as prescribed in these rules;

5. Be fingerprinted; territorial and national fingerprint files shall be searched to determine if the applicant has a criminal record;

a. The applicant is responsible for providing the clerk of the superior court with a readable fingerprint card. The applicant shall pay all costs or fees attributable to any subsequent re-fingerprinting and resubmission of fingerprints due to unreadable prints. The applicant shall only use the fingerprint card issued in the application packet. The Marshal's Division shall perform the fingerprinting.

b. If fingerprints are not obtainable, the chief marshal shall require the applicant to make a written statement, under oath, that the applicant has no prior arrest, charges, indictments, or felony or misdemeanor convictions other than as disclosed on the application. If the applicant is unable to provide this statement the clerk of the superior court of Guam shall refuse to accept the application;

6 Upon the request of the presiding judge or designee, provide additional background information;

7. Pay all the fee authorized by the Judicial Council pursuant to JC Resolution 06-016 re: Schedule of Fees, in the amount of \$150.00 for a Special Proceedings case; and

8. Provide two color photographs, (2"x2") to accompany the application.

d. Examination.

a. Initial Examination. Each applicant for certification or renewal shall personally take and pass the examination provided by the Marshal of the Judiciary of Guam.



b. Reexamination. If the applicant fails the initial examination, the applicant may sit for one reexamination. The examination provided to the applicant for reexamination shall be different than the one the applicant used for initial examination. The applicant shall take the reexamination within 90 days of the date of filing the application. If the applicant fails the reexamination, the applicant shall wait 90 days from the date of the reexamination to submit a request for an additional reexamination pursuant to subsection

4. Decision and Granting Provisional and Standard Certification.

a. Provisional Certification. The presiding judge may grant provisional certification pending receipt of the information requested in the criminal history record check if the applicant provides a completed application, fingerprint card and successfully passes the examination, pursuant to this code section. Before granting the provisional certification, the presiding judge may require additional background information reasonably necessary to determine if the applicant meets the qualifications specified in this code section. Provision certification shall expire 120 days after it is granted unless the presiding judge extends the judges discretion.

b. Standard Certification. Upon receipt of the Territory and national criminal history records checks, successful completion of the examination given pursuant to E(c)(4), the presiding judge shall consider the information and grant or deny the standard certification. Before granting standard certification, the presiding judge may require additional background information reasonably necessary to determine if the applicant meets the qualifications specified in this code section.

5. Denial of Certification.

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

1. Material misrepresentation or fraud in the application for or attempt to obtain certification;
2. A record of any act constituting dishonesty or fraud on the part of the applicant in business or financial matters;
3. A record of conduct showing the applicant is incompetent or a source of injury and loss to the public;

4. A record of repeated complaints by the public or the court;
  5. A record of conviction by final judgment of a felony;
  6. A record of denial, revocation, suspension or any censure of any occupational license of the applicant by any federal, state or local government;
  7. The applicant has been found civilly liable by final judgment in an action involving fraud, misrepresentation, material omission, misappropriation, theft or conversion;
  8. The applicant is currently on probation or parole or named in an outstanding arrest warrant;
  9. The applicant has not submitted fingerprints pursuant to subsection E(2)(c)(4) and the presiding judge has not received and reviewed the criminal background analysis; or
  10. The applicant has violated any Guam laws, Guam Rules of Court and this code section or court order governing private process servers.
- b. An applicant's failure to disclose information on the application that is subsequently revealed through the fingerprint background check may constitute good cause for the presiding judge to automatically deny certification.
  - c. Notification of denial. The presiding judge shall promptly notify all applicants denied certification of the reasons for the denial, and of the applicant's right to a hearing.
  - d. An applicant is entitled to a hearing, pursuant to this code section, on the decision to deny certification upon written request received within 15 days after receipt of notice of the denial. The applicant is the moving party at the hearing and has the burden of proof.

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

1. Code of Conduct. Each certified process server shall adhere to the code of conduct incorporated in these rules and adopted by the Judicial Council of Guam..
2. Identification Cards.
  - a. The identification card is the only official process server identification issued by the court. A certified process server shall carry the identification at all times when serving process and promptly display it when requested by an interested party. This is the only form of identification a certified process

server may use except government employee process servers who may use government issued identification in conjunction with the private process server identification.

- b. Certified private process servers shall report lost or stolen cards to the issuing chief marshal of the court within three days of discovery of the loss. Upon filing an affidavit of loss with the chief marshal of the court and payment of a \$25.00 fee, the chief marshal of the court shall issue a replacement.
  - e. Upon suspension or revocation of certification, the certificate holder shall surrender the issued identification card to the chief marshal of the court within three days.
4. Change of Name or Address. All certificate holders shall notify the clerk of the superior court in the county of certification of any change in the legal name, business address, mailing address or home address or phone number of the certificate holder within 30 days of any change.
5. Assumed Name. A certificate holder shall not transact business in this state under an assumed name or under any designation, name or style, corporate or otherwise, other than the legal name of the individual.
- a. Fees. The applicant shall pay the sum of \$50.00 for training, examination and background check by the Marshal of the Courts, in addition to the \$150.00 fee for opening a Special Proceedings case. The \$50.00 training and examination fee must be paid annually at the time of an annual renewal of a license.

A private process server may charge such fees for services as may be agreed upon between the process server and the party engaging the process server but in no event shall such fees exceed the fees set forth for "Officers and Others Service Process" as set forth in Judicial Council Resolution No. 06-016 as amended by Judicial Council Resolution No. 07-013.

6. Employment Status of Private Process Servers.

- a. Certified private process servers are not employees of the court and may not in any way represent themselves as such.
- b. Private process servers may not, in any way represent themselves as "peace officers" unless they are peace officers. Approval as a certified private process server does not, in itself, confer peace officer status on the holder.

**G. Renewal of Certification.**

## 1. Expiration of Certification.

- a. All certificates expire at midnight one year from the date of issuance. All certifications shall continue in force until expired, suspended, revoked or terminated. A certificate shall expire as of the expiration date unless the certificate holder submits a renewal application and pays the annual \$50 certification fee by the expiration date. When a private process server has filed a completed application for renewal prior to the expiration of the existing certification, the existing certification does not expire until the presiding judge has approved or denied the application.
  - b. If the presiding judge denies the renewal application, the existing certification does not expire until the last day for seeking a hearing on the decision.
  - f. The Clerk of Court shall treat a renewal application filed after the expiration date as a new application and a new Special Proceedings case shall be opened at the cost set forth in Judicial Council Resolution No. 06-016.
  - e. The expiration provisions described in this subsection do not affect the authority of the presiding judge to take disciplinary action, including suspension or revocation of the certification of a certificate holder if a complaint or investigation is pending prior to the expiration date.
2. Voluntary Surrender. A certificate holder may voluntarily surrender a certificate, however, this surrender is not valid until accepted by the presiding judge. The presiding judge may require additional information which is reasonably necessary to determine if the certificate holder has violated this code section. The presiding judge shall, within 120 days of the voluntary surrender of the certification, either file a notice of hearing regarding a complaint and disciplinary action, or accept the surrender
  3. Application. A certified private process server whose certificate is in good standing may renew by filing a completed certification application for renewal, paying all fees, providing two color photographs (two inches by two inches).
  4. Additional Information. Before granting renewal of certification, the presiding judge may require additional information reasonably necessary to determine if the applicant continues to meet the qualifications specified in this code section. This may include fingerprinting, reexamination and background information.
- ## 5. Decision Regarding Renewal.
- a. If the presiding judge is satisfied that the applicant continues to meet all qualifications for certification, as specified in subsection E(2) of this code section, the presiding

judge shall renew the certification of the applicant. The presiding judge may refuse to renew the certification of an applicant for any of the reasons specified in subsection E(5) of this code section. The presiding judge shall promptly notify all applicants granted renewal of certification.

- b. The presiding judge shall promptly notify an applicant denied renewal of certification, of the reasons for the denial, and the applicant's right to a hearing.
- c. An applicant is entitled to a hearing before a hearing officer designated by the Presiding Judge on the decision to deny renewal of certification upon written request received within fifteen days after receipt of notice of the denial. The applicant is the moving party at the hearing and has the burden of proof. The hearing shall be conducted according to the provisions of (G) below.

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

- 1. Complaint. The presiding judge may initiate or accept complaints concerning private process servers and initiate disciplinary action. All judicial officers and their designees shall, and any person may, notify the presiding judge if it appears a certificate holder has violated this code section. A complainant shall make the complaint in writing with sufficient specificity to warrant further investigation. The complaint shall include the name and telephone number of the complainant.
  - a. A certificate holder is subject to disciplinary action if the Program Coordinator finds one or more of the following applies to the certificate holder:
    - (1) Willful violation of or willful noncompliance with a court order, any court rule, Guam law, or this code section;
    - (2) The existence of any cause for which original certification or any renewal of the certification could have warranted denial as described in subsection E(5) or G(5) of these rules
    - (3) Failure to perform any duty to discharge any obligation required by Guam law or these rules;
    - (4) Violation of any federal or state statute, administrative order, rule, code provision or policy regarding service of process or regulating the profession;
    - (5) Falsification or misrepresentation of any document potentially filed with the court;

- (6) Engaging in the practice of law or otherwise providing legal advice while serving process;
- (7) Advertising or otherwise representing services in a false, fraudulent or misleading manner;
- (8) Display of a uniform, title, insignia, badge, business card, identification card or other means of identification or making a statement that would lead a person to believe the certificate holder is an employee of the any government or any branch of the government or any political subdivision of government unless authorized by proper authorities to do so;
- (9) Use of letterhead, business cards, or advertising on any media in any manner to represent the certificate holder is an employee of the any government or any branch of the government or any political subdivision of government unless authorized by proper authorities to do so;
- (10) Failure to display the identification card issued to persons who may have reasonable cause to verify the validity of the certification;
- (11) Failure to cooperate in an inquiry, investigation or disciplinary action by:
  - (a) Not furnishing papers or documents;
  - (b) Not furnishing in writing a full and complete explanation of a matter contained in a complaint when requested;
  - (c) Not responding to subpoenas issued, regardless of whether the recipient of the subpoena is accused in the proceeding;
- (12) Commission of any act involving moral turpitude, dishonesty or corruption whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action;
- (13) Unprofessional conduct, including the failure to exercise appropriate judgment regarding service of process; and
- (14) Willful violation or willful noncompliance of any other provision of the Code of Conduct.

2. Initial Screening. The Presiding Judge or his delegee shall determine if a complaint warrants further

investigation and evaluation. The Presiding Judge may delegate this responsibility to the Program Coordinator.

3. Preliminary Investigation. If warranted, the presiding judge or his delegee will conduct a prompt and confidential investigation of the complaint made.
4. Request for Response from Certificate Holder. The presiding judge or his delegee shall have the complaint sent to the certificate holder within 30 days after receipt of the written communication commencing of the investigation and shall allow the certificate holder provide a written response within 10 days of notification of the complaint. The Presiding Judge or his delegee shall not proceed with disciplinary action under this code section without providing this notice and the opportunity to respond.
5. Review of Complaint and Investigation. Upon completion of an investigation, the presiding judge or his delegee may:
  - a. Determine no violation exists and dismiss the complaint;
  - b. Order further investigation;
  - c. Determine the complaint is appropriate for resolution without proceeding to formal disciplinary proceedings; or
  - d. Determine there is probable cause for belief in the existence of facts warranting formal disciplinary proceedings.
6. Emergency Suspension. If the presiding judge or delegee finds the public health, safety or welfare requires emergency action and incorporates a finding to that effect in the order, the presiding judge may order a summary suspension of the certification of a certificate holder pending proceedings for revocation or other action. The presiding judge shall institute these proceedings within 30 days of the issuance of the emergency suspension order. Upon order of the presiding judge, the clerk of court of the superior court shall immediately notify all judges of the superior court, other clerks of the superior court and the program coordinator of any summary suspension of a certificate holder.
7. Confidentiality. Information or documents obtained or generated by the presiding judge, clerk of the superior court, director, program coordinator or court employees during an open investigation or received in an initial report of misconduct are confidential. Upon determination that a complaint requires formal disciplinary action or upon resolution of any complaint or investigation, records obtained during the investigation become open and are available for public inspection.

8. Formal Disciplinary Proceedings.
  - a. Commencement. The presiding judge may commence formal proceedings if the judge finds reasonable cause to believe the certificate holder has committed misconduct under this code section and the complaint is not appropriate for resolution by informal discipline. The presiding judge may, upon commencement of formal proceedings, select a hearing officer or other appropriate designee, pursuant to subsection H(10) of this code section. For uniformity, consistency and ease of reading, the term “hearing officer” refers to the hearing officer designated by the presiding judge.
  - b. Notice to Certificate Holder. The presiding judge shall have the formal statement of charges served on the certificate holder with a notice advising the certificate holder of the certificate holder’s rights pursuant to this code section. This notice shall comply with the provisions of subsection H(12) of this code section.
9. Request for Hearing. All demands for hearing shall specify:
  - a. The rule that entitles the person to a hearing;
  - b. The factual basis supporting the request for hearing; and
  - c. The relief demanded.
10. Appointment of Hearing Officer. The presiding judge may appoint an employee of the Judiciary of Guam as the hearing officer to hold a hearing when required to do so pursuant to these rules, or upon written demand by a person entitled to a hearing, pursuant to these rules.
11. Time line for Hearing. The hearing officer shall ensure the hearing is held within 45 days of receipt of the request, if the request is made by a certificate holder, unless postponed by mutual consent for good cause. If the request is from the presiding judge, the hearing officer shall hold the hearing as soon as practical at the discretion of the hearing officer.
12. Notice of Hearing. The hearing officer shall prepare and give the parties notice of the hearing at least fifteen days prior to the date set for the hearing. The notice shall include the following information:
  - a. A statement of the time, place and nature of the hearing;
  - b. A statement of the legal authority for conduct of the hearing;



- c. A reference to the particular sections of the statutes, this code section and policies involved;
  - d. A short and plain statement of the allegations or factual basis supporting the relief requested. Amendments to the statement are permissible; and
  - e. If the hearing date has not previously been set, a statement indicating the certificate holder will be afforded a hearing upon request if the certificate holder makes the request in writing within ten days of receipt of the notice.
  - f. Personal service or service by certified mail, return receipt requested to the last business address of record will accomplish service of the notice. For proof of service, a verified statement that service was completed shall be filed with the hearing officer. Service by mail is complete upon deposit in the United States mail.
  - g. If a party is represented by an attorney, the attorney shall receive service.
13. Filings, Answers and Pleadings. A party shall file answers to notices within ten days after the date the notice is served, unless otherwise ordered by the hearing officer. If a party fails to file an answer within the time provided, the person is in default and the hearing officer may determine the proceeding against the party and admit one or more of the assertions contained in the notice. The hearing officer shall determine any defenses not raised in the answer are waived.
- a. Parties shall file all motions at least five days prior to the scheduled hearing date, unless otherwise ordered by the hearing officer.
  - b. Parties shall file responses to motions within five days of the filing of the motion.
  - c. The hearing officer and all parties to the proceeding shall receive copies of all filings.
14. Discovery.
- a. No discovery is permitted, except as provided in this code section, unless mutually agreed to by the parties or permitted by the hearing officer.
  - b. The hearing officer, upon written request, shall order a party to allow the requesting party to have a reasonable opportunity to inspect and copy, at the requesting party's expense, admissible documentary evidence or documents reasonably calculated to lead to admissible evidence prior to a hearing, provided the evidence is not privileged.

- c. The hearing officer, on the hearing officer's motion or upon request, may require, prior to hearing, the disclosure of documentary evidence intended for use at the hearing, and provided the evidence is not privileged.
  - d. Parties may take depositions for use as evidence of witnesses who cannot be subpoenaed or are otherwise unable to attend the hearing. To take a deposition, a party shall file with the hearing officer a written motion, with copies to all parties, setting forth the name and address of the witness, subject matter of the deposition, documents, if any, the parties are seeking for production, time and place proposed for the deposition, and justification for the deposition.
  - e. Parties shall file responses to requests for depositions, including motions to quash, within five days after the filing of the request for deposition.
  - f. If a deposition is permitted, a subpoena and written order shall be issued. The subpoena and order shall identify the person to be deposed, scope of testimony to be taken, documents, if any, to be produced, and time and place of the deposition. The party requesting the deposition shall arrange for service of the subpoena and order, with service on all parties five days before the time fixed for taking the deposition, unless, for good cause shown, the time is shortened by the hearing officer.
15. Subpoenas. For the purposes of investigations, hearings or other proceedings under this code section, the hearing officer may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual concerning the subject of any hearing or investigation. Subpoenas shall be issued, served and enforced in compliance with the Administrative Adjudication Law, 5 GCA 9100 et seq.
16. Prehearing Conference. The hearing officer may order a prehearing conference at the request of any party or on the hearing officer's own initiative. The purpose of the conference is to consider any or all of the following actions:
- a. To reduce or simplify the issues for adjudication;
  - b. To dispose of preliminary legal issues, including ruling on pre-hearing motions;
  - c. To stipulate to the admission of uncontested evidence, facts and legal conclusions;
  - d. To identify witnesses; and

- e. To consider any other matters that will aid in the expeditious conduct of the hearing.

17. Procedure at Hearings.

- a. The hearing officer shall preside over the hearing. The hearing officer shall have the authority to decide all motions, conduct prehearing conferences, determine the order of proof and manner of presentation of other evidence, issue subpoenas, place witnesses under oath, recess or adjourn the hearing and prescribe and enforce general rules of conduct and decorum. Informal disposition may be made of any case by stipulation, agreed settlement, consent order or default.

b. Rights of Parties. At a hearing:

- (1) A party is entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding; and
- (2) Any person may represent themselves or appear through counsel. An attorney who intends to appear on behalf of a party shall promptly notify the hearing officer providing the name, address and telephone number of the party represented and the name, address and telephone number of the attorney.

c. Conduct of Hearing.

- (1) The hearing officer may conduct the hearing in an informal manner and without adherence to the rules of pleading or evidence. The hearing officer shall require evidence supporting a decision is substantial, reliable and probative and shall exclude irrelevant, immaterial or unduly repetitious evidence. There is no right to a jury. All hearings are open to the public.
- (2) The hearing officer shall require that all testimony considered is under oath or affirmation, except matters of which judicial notice is taken or entered by stipulation. The hearing officer may administer oaths and affirmations.

d. Record of Hearing.

- (1) The hearing officer shall ensure the oral proceedings or any part of the oral proceedings are electronically recorded and transcribed on request of any party. The party making the request shall pay the cost of the transcript.
18. Rehearing. The hearing officer may grant a rehearing or reargument of the matters involved in the hearing upon written request of a party to a hearing filing the request with the hearing officer. The party shall make the request within fifteen days after any order made pursuant to a hearing was mailed or delivered to the person entitled to receive the order. The hearing officer shall decide to grant or deny the request within 30 days of the date of filing of the request. The hearing officer shall permit any party served with a request for rehearing to file a response within fifteen days of service.
19. Decisions and Orders. The hearing officer shall render the final decision within 30 days of the closing of the record of a hearing. The hearing officer shall render the final decision in writing and shall include findings of fact and conclusions of law, separately stated. If set forth in statutory language, a concise and explicit statement of the underlying facts shall accompany findings of fact. Parties shall receive notice of any decision or order either personally or by certified mail return receipt to the last known address.
20. Possible Actions.
  - a. Upon completion of an investigation concerning alleged misconduct by a certificate holder, which may or may not include a hearing, the hearing officer shall do one or more of the following:
    - (1) Determine no violation exists and dismiss the complaint;
    - (2) Mandate additional training;
    - (3) Issue a letter of concern or warning;
    - (4) Place restrictions on a certificate;
    - (5) Suspend a certificate for a period not to exceed three years,
    - (6) Revoke a certificate; or
    - (7) Any other action the hearing officer determines appropriate, including return or refund of service fees to a harmed person or entity. This shall not include imposition of a fine.

- b. The hearing officer may resolve a violation by consent order or other negotiated settlement between the parties. This order or settlement may include any of the actions listed in subsection H(20)(a) of this code section.
- c. The hearing officer shall issue an order specifying in what manner and to what extent any failure or violation is found and any sanctions pursuant to this code section. The hearing officer shall, within ten days of any such action, notify in writing the Presiding Judge and the Program Coordinator of the action taken and of any subsequent changes in the status of the individual's approval to serve process.

21. Procedure after Suspension or Revocation.

- a. Upon suspension or revocation of any certification the presiding judge shall have notice promptly served on the certificate holder either in person or by certified mail, return receipt requested, addressed to the last address of record with the program coordinator. Notice by mail is complete upon deposit in the United States mail.
- b. The presiding judge shall only issue certification to any person whose certification had previously been revoked under this code section after the expiration of one year from the date of revocation, and after the person again qualifies in accordance with the applicable provisions of this code section.

22. Judicial Review. Decisions of the presiding judge, hearing officer or other designee regarding certification, renewal of certification or disciplinary action pursuant to this code section are final. Parties may seek judicial review through a the Guam Administrative Adjudication Law.

Adopted by Administrative Order \_\_\_\_\_, Effective \_\_\_\_\_

## BEST PRACTICES from the National Association of Professional Process Servers

### Preamble

Standards and Best Practices are a recitation of some of the essential elements and best methods the association has determined to advance professionalism in the process serving industry and to fulfill our obligations as process servers while at the same time protecting the due process rights of persons affected by our service. Promulgation of these Standards and Best Practices can and should assist others in the establishment of programs beneficial to the process serving industry. These Standards and Best Practices can and should also assist others in a review and meaningful revision of official policies, statutes and rules. These Standards and Best Practices are promulgated for public awareness and use.

### Standards, Best Practices and The Policy Manual

The significant policies and procedures of the association are published in the NAPPS Policy Manual. The Standards and Best Practices, together with the Code of Ethics, form the basis of the policies and procedures recited in the Policy Manual. Although applicable only to members of this association, the Policy Manual is also published for public awareness and use.

### Best Practices for Service of Process

1. For purposes of these Best Practices, "Primary service" of process refers to the service of initial or other process intended to acquire jurisdiction over a person or property. "Secondary service" of process refers to the service of subsequent papers exchanged between the parties following service of initial process. These Best Practices refer to both Primary and Secondary service of process.

The word or phrase "effected" refers to the date that legal process is delivered, sent or transmitted to a party.

The word or phrase "completed" refers to the date that legal process is legally binding upon a party. This date may be the same as when legal process is personally delivered to a party, or when presumed by law to have been received by a party.

2. Service of process or other papers for the purpose of acquiring jurisdiction over a person or property should be performed by a disinterested third party.
3. The preferred and most effective method of service of process upon a party is **in-person** delivery of process to the named party.
4. When in-person service upon a named party cannot be effected, the next best method of service should be in-person delivery of process to a person authorized by court rule or

statute to deliver process to on behalf of the named party. For example, this includes such person as "member of household," "person apparently in charge at a usual place of business," "person of suitable age and discretion," "parent," "guardian," "registered agent" and "statutory agent,".

5. When service cannot be effected as described in 3 and 4 above, the next best methods of service is alternate methods authorized by court rule or statute upon a demonstration of the fact that service cannot be effected by the methods in 3 and 4 above. This would include service by mail, posting, publication and electronic means. If service is authorized in a manner other than by in-person delivery, service should not be deemed completed until at least three days after service is effected, unless acknowledged by the recipient.
6. When service cannot be effected by any of the methods described above, the Court, upon a showing that service cannot be effected by any of these methods, may order service to be done in a manner reasonably calculated to provide actual notice to the party.