

## ACJA 7-202 (J) – Code of Conduct

**J. Code of Conduct.** This code of conduct is adopted by the supreme court to apply to all certified fiduciaries pursuant to A.R.S. § 14-5651(A)(1) in the state of Arizona. The purpose of this section is to establish minimum standards of performance for certified fiduciaries.

1. Decision Making. The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.
  - a. The fiduciary shall make all reasonable efforts to determine the preferences of the ward or protected person, both past and current, regarding all decisions the fiduciary is empowered to make.
  - b. The fiduciary shall make decisions in accordance with the determined preferences of the ward or protected person, past or current, in all instances except when the fiduciary is reasonably certain the decision will result in substantial harm.
  - c. When it is not possible to determine the preferences of the ward or protected person, the fiduciary shall make decisions in the best interest of the ward or protected person.
  - d. The fiduciary shall maintain an awareness of their limitations, shall carefully consider the views and opinions of those involved in the treatment, care and management of the ward, protected person, or estate and shall also seek independent opinions when necessary.
  - e. The fiduciary shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Regardless, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, protected person, or estate.

- f. The fiduciary shall refrain from decision making in areas outside the scope of the guardianship, or conservatorship, or personal representative order. When necessary and in the best interests of the ward or protected person, the fiduciary shall assist the ward or protected person by ensuring decisions are made in an autonomous fashion.
  2. Ethics. The fiduciary shall exhibit the highest degree of trust, loyalty and fidelity in relation to the ward, protected person, or estate.
    - a. The fiduciary shall manage and protect the personal and monetary interests of the ward or protected person and foster growth, independence and self reliance to the maximum degree.
    - b. The fiduciary shall avoid self-dealing or the appearance of a conflict of interest. Self-dealing or a conflict of interest arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent. In situations where no other services are available, the fiduciary shall disclose the potential conflict in a petition to the superior court, seeking approval prior to the provision of services.
    - c. The fiduciary shall vigorously protect the rights of the ward or protected person against infringement by third parties.
    - d. The fiduciary shall, whenever possible, provide all pertinent information to the ward or protected person unless the fiduciary is reasonably certain substantial harm will result from providing this information.
    - e. The fiduciary shall ensure any document filed with the superior court is timely.
    - f. The fiduciary shall not knowingly file any document with the superior court or present testimony to the superior court which is misleading, inaccurate, false, or contains misstatements, misrepresentations or omissions of material facts. The fiduciary shall inform the superior court within ten days of the change in location or death of a client or ward.
    - g. The fiduciary shall only prepare powers of attorney or other legal documents, if also certified as a legal document preparer pursuant to ACJA § 7-208, except as ordered by the court. This provision does not apply to the Arizona Department of Veterans Services pursuant to A.R.S. § 41-603(A).
    - h. The fiduciary shall, if serving in the capacity of any type of a power of attorney, trustee, or legal custodian for the federal veterans' services division, disclose to the public, ward or client their supreme court certification does not pertain to these functions.
  3. Guardianship. The fiduciary acting as guardian shall assume legal custody of the ward and shall ensure the ward resides in the least restrictive environment available. The fiduciary or the fiduciary's qualified representative, if the ward is located outside the county or state, shall visit the ward no less than quarterly and

as often as is necessary to ensure the client's well-being. The fiduciary shall assume responsibility to provide informed consent on behalf of the ward for the provision of care, treatment and services and shall ensure this care, treatment and services represent the least restrictive form of intervention available.

- a. On appointment, the fiduciary shall take steps to become informed of the statutory requirements for a guardian.
- b. The fiduciary shall keep informed and aware of the options and alternatives available for establishing the ward's place of residence.
- c. The fiduciary shall make decisions in conformity with the preferences of the ward in establishing the residence of the ward unless the fiduciary is reasonably certain this decision will result in substantial harm.
- d. The fiduciary shall, when it is not possible to determine the preferences of the ward or where they will result in substantial harm, make decisions with respect to the place of abode of the ward that are in conformity with the best interests of the ward.
- e. The fiduciary shall not remove the ward from the home of the ward or separate the ward from family and friends unless this removal is necessary to prevent substantial harm. The fiduciary shall make every reasonable effort to ensure the ward resides at home or in a community setting.
- f. The fiduciary shall seek professional evaluations and assessments whenever necessary to determine if the current or proposed placement of the ward represents the least restrictive environment available to the ward. The fiduciary shall work cooperatively with available community based organizations to assist in ensuring the ward resides in a non-institutional environment.
- g. The fiduciary shall monitor the placement of the ward on an on-going basis to ensure the continued appropriateness of the placement and shall consent to changes as they become necessary or advantageous for the ward.
- h. The fiduciary shall, if the only available placement is not the most appropriate and least restrictive, advocate for the rights of the ward, negotiate a more desirable placement with a minimum of delay and retain legal counsel for assistance if necessary.
- i. The fiduciary shall make decisions in conformity with the preferences of the ward when providing consent for the provision of care, treatment and services, unless the fiduciary is reasonably certain these decisions will result in substantial harm to the ward.
- j. The fiduciary, when it is not possible to determine the preferences of the ward or they will result in substantial harm, shall make decisions with respect to care, treatment and services, in conformity with the best interests of the ward.

- k. The fiduciary, in the event the only available treatment, care or services are not the most appropriate and least restrictive, shall advocate for the right of the ward to a more desirable form of treatment, care or services, retaining legal counsel to assist if necessary.
  - l. The fiduciary shall seek professional evaluations and assessments whenever necessary to determine whether the current or proposed care, treatment and services represent the least restrictive form of intervention available.
  - m. The fiduciary shall work cooperatively with available individuals and organizations to assist in ensuring the ward receives care, treatment and services representing the least restrictive form of intervention available and are consistent with the wishes or best interests of the ward.
  - n. The fiduciary shall not consent to extraordinary medical procedures without prior authorization from the superior court. The procedures the fiduciary shall not consent to without prior court approval include abortion, sterilization, organ transplants, psycho surgery, electro-convulsive therapy, medical treatment for clients whose religious beliefs prohibit these treatments and any other treatments or interventions the court shall approve pursuant to state law.
  - o. The fiduciary shall keep abreast of the laws of the state regarding the withholding or withdrawal of life-sustaining treatment.
  - p. The fiduciary shall monitor the care, treatment and services the ward is receiving to ensure their continued appropriateness and shall consent to changes as they become necessary or advantageous to the ward.
  - q. The fiduciary shall ensure the ward is receiving all medical and financial benefits to which the ward may be entitled.
  - r. The fiduciary shall protect and manage the monetary interests of the ward when acting in a *de facto* conservatorship, including no co-mingling of funds and assets.
4. Conservatorship. The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise intelligence, prudence and diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.
- a. On appointment, the fiduciary shall take steps to become informed of the statutory requirements for managing a protected person's estate.
  - b. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the protected person's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.
  - c. The fiduciary shall not co-mingle any property or assets of the protected

- person's estate with property or assets of other clients' estates the fiduciary may hold as conservator or in another capacity, nor co-mingle with the fiduciary's own property or assets.
- d. The fiduciary shall manage the income of the estate with the primary goal of providing for the needs of the protected person, and in certain cases, the needs of the dependents of the protected person for support and maintenance.
  - e. The fiduciary shall exercise prudence in the investment of surplus funds of the estate.
  - f. The fiduciary shall petition for and receive authority from the superior court, prior to expending estate funds for gifting.
  - g. The fiduciary shall have no self-interest in the management of the estate and shall exercise caution to avoid even the appearance of self-interest.
  - h. The fiduciary shall ensure the protected person is receiving all medical and financial benefits to which the protected person may be entitled.
  - i. The fiduciary shall ensure all fees and expenses incurred for the protected person by the fiduciary, including compensation for the services of the fiduciary are reasonable in amount and necessarily incurred for the welfare of the protected person.
  - j. The fiduciary shall prepare complete, accurate and understandable accountings and inventories.
  - k. The fiduciary shall protect the rights and make decisions in the best interest of the protected person when acting in a *de facto* guardianship.
5. Personal Representative. A fiduciary acting as personal representative shall settle and distribute the estate of the decedent efficiently, timely and in the best interests of the estate and, if appropriate, in accordance with the terms of any probated and effective will.
- a. On appointment, the fiduciary shall take steps to become informed of the statutory requirements for managing a decedent's estate.
  - b. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the decedent's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.
  - c. The fiduciary shall not co-mingle any property or assets of the decedent's estate with property or assets of other estates the fiduciary may hold as personal representative, nor co-mingle with the fiduciary's own property or assets.

- d. A fiduciary shall exercise intelligence, prudence and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties of accounting applicable to trustees.
  - e. A fiduciary shall resolve questions in good faith and make decisions that are most beneficial to the estate.
  - f. A fiduciary shall have no self-interest in the management of the decedent's estate and shall exercise caution to avoid even the appearance of self-interest.
  - g. A fiduciary shall ensure all fees and expenses for the estate, including compensation for the fiduciary, are reasonable in amount and necessarily incurred in the administration of the decedent's estate.
  - h. A fiduciary acting as personal representative shall prepare complete, accurate and understandable court documents, including, but not limited to, petitions for determination of heirs, inventories, accountings and closing statements.
6. Termination. The fiduciary has an affirmative obligation to seek termination or limitation of the guardianship or conservatorship wherever indicated.
- a. The fiduciary shall diligently seek out information to provide a basis for termination or limitation of the guardianship or conservatorship.
  - b. The fiduciary, upon indication of termination or limitation of the guardianship or conservatorship order is warranted, shall promptly request court action, retaining legal counsel if necessary.
  - c. The fiduciary shall assist the ward or protected person in termination or limiting the guardianship or conservatorship and arrange for independent representation for the ward whenever necessary.
7. Compliance. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law and the administrative rules, court orders, administrative orders, ACJA § 7-201 and this section adopted by the supreme court governing the certification of fiduciaries.