



**Secretary of State
State of California**

**NOTARY PUBLIC
DISCIPLINARY GUIDELINES
2012**

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**SECRETARY OF STATE
FINAL TEXT OF REGULATIONS**

Chapter 8. Notary Public

§ 20804. Notary Public Disciplinary Guidelines.

- (a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the Secretary of State shall consider the disciplinary guidelines entitled "Notary Public Disciplinary Guidelines 2012" which are hereby incorporated by reference. Deviation from the "Notary Public Disciplinary Guidelines 2012" is appropriate when the Secretary of State in his or her sole discretion determines that the facts of the particular case warrant such deviation (e.g., nature and severity of the act, the presence of mitigating factors or evidentiary problems).
- (b) The publication entitled "Notary Public Disciplinary Guidelines 2012" is available on the internet at www.sos.ca.gov or contact the Secretary of State, Notary Public Section, Attention: Publications, 1500 11th Street, Sacramento, California 95814.

Note: Authority: Sections 8220 and 11400.20, Government Code.

Reference: Sections 11400.20 and 11425.50(e), Government Code.

**SECRETARY OF STATE
NOTARY PUBLIC DISCIPLINARY GUIDELINES**

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INTRODUCTION

The Secretary of State is charged with the responsibility of appointing and commissioning notaries public in the State of California. In the performance of such duties, the Secretary of State strives to ensure that applicants and commissioned notaries public possess the requisite honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the position. Character is germane to the qualifications of the office of a notary public, given the nature of the duties and responsibilities. Government, business, and the public depend on the integrity of notaries public to take the required steps in authenticating signatures and properly completing transactions. The issue of good character is the foundation of all notarial acts.

California Government Code section 8201.1 requires the Secretary of State to determine whether an applicant possesses the requisite qualities prior to granting an appointment and commission as a notary public. Information provided on an application, such as outstanding bench warrants and arrest warrants, may prevent the Secretary of State from making an immediate determination. In such cases, the Secretary of State may hold the application and request additional information from the applicant to resolve any questions or deny the application.

To ensure the integrity of notaries public, the Secretary of State may refuse to appoint any person as a notary public or may revoke or suspend the commission of any notary public for failure to meet the minimum qualification standards or violation of notary public law. In addition to appointing and commissioning notaries public, the Notary Public Section of the Secretary of State receives complaints, investigates alleged violations of notary public law, and conducts administrative hearings. The authority of the Secretary of State to institute disciplinary action is provided for in Chapter 3 of Division 1 of Title 2 of the Government Code (commencing with section 8200). Furthermore, the Secretary of State may adopt rules and regulations to enforce applicable laws pursuant to Government Code section 8220.

The disciplinary guidelines contained herein are intended to facilitate due process and uniformity in reviewing applications, investigating alleged violations, and instituting administrative actions. The disciplinary guidelines are designed to assist administrative law judges, attorneys, notaries public, notary public applicants, and others involved in the disciplinary process. The Secretary of State anticipates periodic revision of the disciplinary guidelines, to provide accurate and complete information regarding the disciplinary process of the agency. The disciplinary guidelines address only the Secretary of State's review of applications, investigations, and administrative actions and are not a comprehensive overview of the criminal and civil offenses in statute, which may subject a notary public to additional civil penalties or to criminal prosecution for violations of applicable law.

California law establishes a number of infraction, misdemeanor, and felony offenses applicable to notaries public in addition to the sanctions discussed in these guidelines. For more information, please review Government Code sections 6203 and 8200 et seq., Civil Code section 1185 et seq., and Penal Code sections 115 et seq., 470 et seq., and 530.5.

In reviewing an application or investigating an alleged violation of notary public law, the Secretary of State must consider the totality of the offense, facts, and circumstances in each individual case. Some cases may require departure from the recommended actions in the disciplinary guidelines. If individual circumstances exist which justify departure from the disciplinary guidelines, the Secretary of State requests that the administrative law judge hearing the case clearly delineate the factual basis for his or her proposed decision. This will assist the Secretary of State in evaluating proposed decisions and issuing final decisions that accurately reflect the facts of each specific disciplinary matter.

The guidelines reflect the specific civil penalties established for certain violations of notary public law in Government Code sections 8213.5, 8213.6, 8214.15, 8214.21, and 8214.23, and Civil Code sections 1185 and 1189, where applicable. A civil penalty may be imposed in conjunction with a revocation or suspension of a commission or the denial of an application submitted by a person who may have held a notary public commission in the past or as the sole disciplinary sanction taken against a notary public.

To protect the public and deter violations of notary public law, the Secretary of State may publish disciplinary action decisions as a matter of public record.

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DESCRIPTION OF PENALTIES

DENIAL

This action denies an application for an appointment and commission as a notary public. In notifying the applicant of the denial, the Secretary of State must specify the reasons for the denial. If an applicant had a violation during a previous commission, the Secretary of State may deny an application for a new commission as a notary public. The applicant may appeal the denial by requesting an administrative hearing.

REVOCAION

This action revokes a commission as a notary public and prohibits the respondent from performing the duties and responsibilities of a notary public, including acts that require a commission as a notary public.

The respondent has thirty (30) calendar days from the date of the revocation to deliver all notary public records and papers, including the notary public journal, to the clerk of the county in which the current oath of office as a notary public is on file. If the respondent willfully fails or refuses to deliver all notary public records and papers to the county clerk within that time, the respondent is guilty of a misdemeanor and is personally liable for damages to any person injured by the action or inaction. (Government Code section 8209(a).)

Government Code section 8207 requires the respondent to destroy or deface his or her notary public seal upon revocation of the notary public's commission.

SUSPENSION

Imposition of a suspension is intended to protect the public from continued illegal behavior and facilitate the rehabilitation of the respondent, including correction of deficiencies in skills, education or personal rehabilitation. This action, which may be taken in conjunction with a stayed revocation, prohibits the respondent from engaging in or performing the duties and responsibilities of a notary public, including acts that require a commission as a notary public, for a specified period of time. Furthermore, the respondent shall be ordered to notify all customers of the suspension.

To ensure compliance with the suspension, approximately thirty (30) calendar days after the conclusion of the suspension, the Secretary of State will send a written request by certified mail to the respondent for certified copies of the notary public's journal. The requested journal entries will include, but will not be limited to, the period of time including thirty (30) calendar days prior to the suspension, the duration of the suspension, and

thirty (30) calendar days following the conclusion of the suspension. Government Code section 8205(b) requires the respondent to provide certified copies of the journal to the Secretary of State within the time specified in the written request.

CIVIL PENALTY

In addition to revoking or suspending a notary public commission, or denying a new commission to a person, the Secretary of State may also impose civil penalties as prescribed by law.

PUBLIC NOTICE

Any disciplinary sanction or civil penalty imposed as a result of a decision may be published by the Secretary of State. Additionally, the Secretary of State may issue press releases or other public notices of disciplinary action, including posting notices on the Secretary of State's website.

IMPORTANT NOTE

Probation and restriction of a commission as a notary public are not available to the Secretary of State as disciplinary sanctions for violations of notary public law.

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FACTORS CONSIDERED

In determining whether to deny, revoke or suspend a commission as a notary public, the Secretary of State considers a variety of factors, including, but not limited to, the following:

- (1) Nature and severity of the act, offense or crime under consideration.
- (2) Number and/or variety of current violations.
- (3) Evidence pertaining to the requisite honesty, credibility, truthfulness, and integrity of the applicant or commissioned notary public.
- (4) Actual or potential harm to the general public, group, individual or customer.
- (5) History of complaints received by the Secretary of State.
- (6) Prior disciplinary record or warning from the Secretary of State.
- (7) Circumstances or evidence in mitigation. (See page 35.)
- (8) Circumstances or evidence in aggravation. (See page 36.)
- (9) Prior disciplinary record of occupational, vocational or professional license.
- (10) Evidence of rehabilitation and, in the case of a criminal conviction, evidence of a certificate of rehabilitation or dismissal of the offense.
- (11) Bench warrants or arrest warrants delay or prevent the Secretary of State from determining whether an applicant possesses the requisite honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the office. In such cases the Secretary of State may hold the application and request additional information from the applicant or other sources, or may deny the application.
- (12) Pending appeals or other procedural issues of a criminal conviction(s) delay or prevent the Secretary of State from determining whether an applicant possesses the requisite honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the office. In such cases the Secretary of State may hold the application and request additional information from the applicant or other sources, or may deny the application.

(13) Criminal record.

(14) Reports generated by law enforcement agencies.

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VIOLATIONS AND RECOMMENDED ACTIONS

The Secretary of State maintains and enforces minimum qualification standards to protect the public and ensure that notaries public thoroughly understand and abide by the applicable laws in the performance of their duties and responsibilities. The Secretary of State's emphasis is on disciplining notaries public that demonstrate incompetence or willful misconduct.

Government Code section 8214.1 specifies the grounds for which the Secretary of State may deny an application for a commission or revoke or suspend the commission of a notary public. Government Code section 8219.5 specifically addresses advertising in a language other than English and the requisite notice to be posted, and requires the Secretary of State to suspend or revoke the commission of a notary public on the first violation, and permanently revoke the commission of a notary public on the second violation. The disciplinary guidelines below identify the sanctions the Secretary of State may impose under Government Code sections 8213.5, 8213.6, 8214.1, 8214.15, 8214.21, 8214.23, and 8219.5, and Civil Code sections 1185 and 1189 following an administrative proceeding.

Each individual case must be reviewed in detail and may warrant departure from the disciplinary guidelines. In such cases, the Secretary of State requests that the administrative law judge clearly delineate the factual basis for deviating from the disciplinary guidelines.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(a) Substantial and Material Misstatement or Omission in an Application to Become a Notary Public

Applications for commission as a notary public are signed under penalty of perjury. Applicants certify that all statements are true and complete. The information contained in the application is used by the Secretary of State to determine the identity of the applicant and whether the applicant possesses the requisite honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the position. Therefore, complete and accurate disclosure of the requested information is essential for the Secretary of State to evaluate applicants and appoint and commission notaries public in the State of California.

- (1) If the application contains a substantial and material misstatement or omission *other than* information relating to a conviction of a felony, a lesser offense involving moral turpitude or a lesser offense incompatible with the duties or responsibilities of a notary public, the recommended action is:

Denial of the application.

- (2) If the application contains a substantial and material misstatement or omission *relating to a conviction* of a felony, a lesser offense involving moral turpitude or a lesser offense incompatible with the duties or responsibilities of a notary public, the recommended action is:

Denial of the application.

- (3) If the Secretary of State issues a commission as a notary public and subsequently finds that the application contained a substantial and material misstatement or omission, the recommended action is:

Revocation of the commission.

Example 1: False or misleading information regarding, but not limited to:

- Date of birth
- Social security number
- Driver's license or identification card
- Citizenship or alien registration

Example 2: False, misleading or omitted information about any arrest(s) or conviction(s) for a felony or lesser offense, including but not limited to:

- Driving under the influence (DUI)

- Theft or petty theft
- Trespassing
- Forgery
- Prostitution

NOTE: All convictions must be disclosed, regardless of when or where they occurred, including convictions that have been dismissed or expunged under Penal Code sections 1203.4 or 1203.4a. The only exceptions are traffic infractions, offenses adjudicated in a juvenile court or under a youthful offender law, and any incident that has been sealed under Welfare and Institutions Code section 781 or Penal Code section 1203.45 (juvenile offenses).

Example 3: False, misleading or omitted information about prior court ordered judgments, including, but not limited to:

- Small claims judgments
- Civil actions

Example 4: False, misleading or omitted information about prior administrative action(s), as a commissioned notary public or other licensed professional, including, but not limited to:

- Notary public, administrative and/or criminal actions
- Real estate, administrative and/or criminal actions
- Attorney, administrative and/or criminal actions
- Medical doctor, administrative and/or criminal actions
- Insurance, administrative and/or criminal actions
- Contractor, administrative and/or criminal actions

Example 5: False, misleading or omitted information about the use of another name, including, but not limited to:

- All aliases
- Maiden name(s)
- Court sanctioned name change

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(b) Conviction of a Felony or Lesser Offense

In cases when an applicant or a commissioned notary public has been convicted of a felony, a lesser offense involving moral turpitude, or a lesser offense of a nature incompatible with the duties of a notary public, the Secretary of State must determine whether the applicant or commissioned notary public possesses the requisite honesty, credibility, truthfulness, and integrity to fulfill the duties and responsibilities of the office. A conviction after a plea of nolo contendere is a conviction within the meaning of this subdivision.

- (1) If an applicant has been convicted of or pled nolo contendere to a felony, a lesser offense involving moral turpitude, or a lesser offense of a nature incompatible with the duties of a notary public, the recommended action is:

Denial of the application.

- (2) If a commissioned notary public is convicted of or pled nolo contendere to a felony, a lesser offense involving moral turpitude or a lesser offense of a nature incompatible with the duties of a notary public during the term of a commission, the recommended action is:

Revocation of the commission.

Departure from the above recommended actions may be warranted based upon the following factors:

- (a) In the case of a felony conviction, the passage of not less than ten (10) years since the completion of probation or parole or, if probation or parole was not ordered, then release from incarceration;
- (b) In the case of a conviction for a lesser offense involving moral turpitude or incompatible with the duties of a notary public, the passage of not less than five (5) years since the completion of probation or parole or, if probation or parole was not ordered, then release from incarceration.

If the time periods specified above have been met for each conviction, the Secretary of State should also consider the following in determining whether departure from the above recommended actions is warranted:

- (a) If the conviction occurred in the State of California, evidence that a certificate of rehabilitation has been issued in accordance with Chapter 3.5 (commencing with Section 4852.01) of the Penal Code for each felony conviction, or a dismissal pursuant to Penal Code section 1203.4 or 1203.4a for each misdemeanor conviction. If the conviction occurred outside the jurisdiction of this state, evidence attesting to some level of rehabilitation comparable to that provided in Chapter 3.5 (commencing with Section

4852.01) of the Penal Code for each felony conviction, or relief comparable to a dismissal pursuant to Penal Code section 1203.4 or 1203.4a for each misdemeanor conviction;

- (b) Restitution to any person or entity who has suffered monetary losses through “substantially related” acts or omissions of the applicant in connection with the criminal conviction;
- (c) Payment of any fine or other monetary penalty imposed in connection with a criminal conviction or an administrative adjudication; and
- (d) Correction of any business practices which resulted in injury to others or which had the potential to cause injury in connection with the criminal conviction.

Convictions of other offenses involving moral turpitude or lesser offenses incompatible with the duties of a notary public include, but are not limited to, crimes involving the following:

- Arson-related offenses
- Assault
- Auto theft
- Battery
- Burglary
- Carrying a concealed weapon
- Carrying a loaded firearm in a public place
- Child molestation
- Child pornography
- Conspiracy
- Discharge of a firearm in a public place or into an inhabited dwelling
- Drugs, possession for sale and sale
- Embezzlement
- Escape without force
- Failure to comply with a court order
- Failure to pay child support
- Failure to return to confinement
- False financial statements
- False imprisonment
- Forgery
- Fraud involving, but not limited to, bank cards, credit cards, insufficient funds/checks, insurance, mail, Medi-Cal or Medicare, real estate, tax, and welfare
- Fraudulent impersonation of a peace officer
- Hit and run
- Kidnapping-related offenses
- Manslaughter
- Pimping and pandering
- Possession of an unregistered firearm

- Practicing without a license when a license is required
- Prostitution
- Rape
- Receipt of stolen property
- Resisting or threatening a peace officer
- Robbery
- Solicitation
- Statutory rape
- Tax evasion
- Terrorist threats
- Theft, grand and petty, including burglary and robbery
- Threats to commit a crime involving death or great bodily injury
- Violation of Penal Code section 273.5 (domestic violence, spousal abuse, etc.)

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(c) Revocation, Suspension, Restriction or Denial of a Professional License

The Secretary of State may review and institute administrative actions in cases when an applicant or commissioned notary public was granted a professional license that was revoked, suspended, restricted, or an application was denied, for misconduct, dishonesty, or any cause that is substantially related to the duties or responsibilities of a notary public. "Professional license" includes any professional, occupational or vocational license issued by a governmental entity.

- (1) If a professional license of an applicant was revoked, suspended, restricted, or an application was denied for misconduct, dishonesty, or any cause that is substantially related to the duties or responsibilities of a notary public, the recommended action is:

Denial of the application.

- (2) If a professional license of a commissioned notary public is revoked, suspended, restricted, or an application is denied during the appointment and commission as a notary public for misconduct, dishonesty, or any cause that is substantially related to the duties or responsibilities of a notary public, the recommended action is:

Revocation of the commission.

Example: Applicable professional licenses held by a notary public applicant or commissioned notary public include, but are not limited to:

- Real estate
- Attorney
- Insurance

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(d) Failure to Discharge the Duties or Responsibilities of a Notary Public

Notaries public are charged with a variety of duties and responsibilities relating, but not limited, to performing notarial acts, maintaining and securing a notary public journal and seal, and notifying the Secretary of State of address and name changes. Notarial duties, responsibilities and acts that are not properly performed compromise the integrity of notarized documents and jeopardize the interests of the customers of the notary public.

- (1) If an applicant during a previous commission as a notary public failed to discharge any of the duties or responsibilities of a notary public, the recommended action is:

Denial of the application and the maximum civil penalty permitted by law of \$750.
(Government Code section 8214.15(b).)

- (2) If a commissioned notary public fails to discharge any of the duties or responsibilities of a notary public, the recommended action is:

Revocation of the commission and the maximum civil penalty permitted by law of \$750.
(Government Code section 8214.15(b).)

- (3) In addition to the civil penalties described above,

- a notary public who fails to obtain a thumbprint, as required by Government Code section 8206, from a party signing a document, is subject to a separate civil penalty of \$2,500. (Government Code section 8214.23.)
- a notary public who fails to obtain satisfactory evidence from a credible witness, as required by Civil Code section 1185, is subject to a separate civil penalty of \$10,000.

Examples:

- Failure to verify identification
- Failure to require personal appearance
- Unauthorized use of seal
- Failure to maintain the notary journal with complete records of official acts
- Failure to complete journal line items at the time of the notarial act
- Failure to obtain a thumbprint in the notary journal
- Notarization of incomplete documents
- Failure to notify Secretary of State of any address changes
- Failure to respond to a written request from the Secretary of State
- Loss of the right to authorize confidential marriages

NOTE: Discussion of Confidential Marriages.

If after conducting a hearing the county clerk finds that the notary public has violated any of the provisions of Family Code section 500 et seq. or section 530 et seq. regarding issuing confidential marriages, the county clerk may place the notary public on probation for issuing confidential marriage licenses or may suspend or revoke the approval to issue confidential marriage licenses. If a notary public violates any of the provisions of Government Code section 8214.1, the county clerk's approval to issue confidential marriage licenses automatically will be revoked. In addition, the county clerk will report the findings of any hearing to the Secretary of State for appropriate action.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(e) Adjudged Liable for Damages in Any Suit Grounded in Fraud, Misrepresentation, Violation of State Regulatory Laws or Failure to Discharge Fully and Faithfully the Duties of a Notary Public

A notary public applicant or commissioned notary public adjudged liable for damages in a case involving fraud, misrepresentation, violation of state regulatory laws or failure to fully and faithfully discharge the duties of the office is in direct conflict with the most fundamental requirements of the office of a notary public.

- (1) If an applicant was adjudged liable for damages in any suit grounded in a violation of state regulatory laws or failure to discharge fully and faithfully the duties of a notary public, the recommended action is:

Denial of the application.

- (2) If a commissioned notary public is adjudged liable for damages in any suit grounded in fraud, misrepresentation or violation of state regulatory laws or failure to discharge fully and faithfully the duties of a notary public, the recommended action is:

Revocation of the commission.

Example 1: A judgment entered against a notary public in a civil action in which the notary public performed a fraudulent notarial act, such as executing an acknowledgment without requiring the signer to appear in person before the notary public.

Example 2: A judgment entered against a notary public in which the notary public was liable for damages in a suit which was grounded in fraud and breach of fiduciary duty and the failure of the notary public to properly discharge his or her duties. Fraudulent activities may include, but are not limited to, altering escrow documents, passing the costs on to the escrow company's customers, charging customers for notary public services that were not provided, charging notary public fees that exceeded statutory limits, and forging a customers signature.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(f) Use of False or Misleading Advertising

A commissioned notary public is prohibited from using false or misleading advertising representing that he or she has duties, rights or privileges that he or she does not possess by law.

- (1) If an applicant, during a previous commission as a notary public, used false or misleading advertising representing that he or she had duties, rights or privileges that he or she did not possess by law, the recommended action is:

Denial of the application and the maximum civil penalty permitted by law of \$1,500. (Government Code section 8214.15(a).)

- (2) If a commissioned notary public used false or misleading advertising representing that he or she had duties, rights or privileges that a notary public does not possess by law, the recommended action is:

Revocation of the commission and the maximum civil penalty permitted by law of \$1,500. (Government Code section 8214.15(a).)

Example 1: Notary public whose commission has been suspended, advertises notary public services while on suspension.

Example 2: Notary public advertises services as a real estate agent when not licensed as a real estate agent.

NOTE: See also Discussion of Advertising Violations on page 32.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(g) Practice of Law Without a License

A notary public applicant or commissioned notary public, who is not an active member of the State Bar of California shall not practice law. Business and Professions Code section 6125 states that, “No person shall practice law in California unless the person is an active member of the [California] State Bar.”

- (1) If an applicant has been engaged in the practice of law in violation of Business and Profession Code section 6125, the recommended action is:

Denial of the application.

- (2) If a commissioned notary public has been engaged in the practice of law in violation of Business and Professions Code section 6125, the recommended action is:

Revocation of the commission.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(h) Charging more than the Prescribed Fees

Government Code sections 8211 and 8223 establish the fees a commissioned notary public may charge for notarial acts.

- (1) If an applicant, during a previous commission as a notary public, charged more than the fees prescribed by law, the recommended action is:

Denial of the application and the maximum civil penalty permitted by law of \$750. (Government Code section 8214.15(b).)

- (2) If a commissioned notary public charged more than the fees prescribed by law, the recommended action is:

Revocation of the commission and the maximum civil penalty permitted by law of \$750. (Government Code section 8214.15(b).)

Example: A notary public charged a total of forty dollars (\$40) for a notarization, ten dollars (\$10) for an acknowledgment and thirty dollars (\$30) for a travel fee. However, the notary public did not travel.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(i) Act Involving Dishonesty, Fraud, or Deceit with the Intent to Substantially Benefit the Notary Public or Another, or Substantially Injure Another

Committing an act involving dishonesty, fraud, or deceit with the *intent* to benefit the notary public or applicant or substantially injure another is in direct conflict with the most fundamental requirements of any individual appointed to the office of notary public or an applicant.

- (1) If an applicant committed any act involving dishonesty, fraud, or deceit with the intent to substantially benefit the applicant or another, or to substantially injure another, the recommended action is:

Denial of the application and the maximum civil penalty permitted by law of \$1,500. (Government Code section 8214.15(a).)

- (2) If a commissioned notary public committed any act involving dishonesty, fraud, or deceit with the intent to substantially benefit the notary public or another, or to substantially injure another, the recommended action is:

Revocation of the commission and the maximum civil penalty permitted by law of \$1,500. (Government Code section 8214.15(a).)

Example 1: Embezzlement with the intent to benefit the applicant and/or notary public and defraud the employer, thereby committing a willful act involving dishonesty and deceit.

Example 2: Compromising the notary public examination by taking any exam material by any method from the exam site or cheating during the notary public exam.

Example 3: An individual embezzled funds from his employer. The employer did not want to file charges against the employee. An agreement is drawn up between the employer and the employee to pay back the funds and is signed by both parties.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(j) Failure to Complete the Acknowledgment at the Time the Signature and Seal are Affixed to the Document

Government Code section 8205 requires a notary public to fully complete an acknowledgment at the time the notary public signs the acknowledgment and affixes the notary public seal.

- (1) If an applicant, during a previous commission as a notary public, failed to complete an acknowledgment at the time he or she signed the acknowledgment and affixed his or her notary seal to the document, the recommended action is:

Denial of the application and the maximum civil penalty permitted by law of \$750. (Government Code section 8214.15(b).)

- (2) If a commissioned notary public fails to complete the acknowledgment at the time he or she signs the document and affixes his or her notary seal, the recommended action is:

Revocation of the commission and the maximum civil penalty permitted by law of \$750. (Government Code section 8214.15(b).)

Example: Affixing a notary public seal and signature to an acknowledgment that is incomplete because the notary public did not complete the venue, the date, or the names of the person(s) appearing before the notary public. The acknowledgment may or may not be associated with the execution of a specific document.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(k) Failure to Administer the Oath or Affirmation

Government Code section 8205(a)(3) requires a notary public, upon request, to administer oaths and affirmations in all matters incident to the duties of the office or to be used before any court, judge, officer, or board. The notary public must sign the oath or affirmation and affix the notary public seal at the time of the oath or affirmation.

- (1) If an applicant, during a previous commission as a notary public, failed to administer the oath or affirmation as required by Government Code section 8205(a)(3), the recommended action is:

Denial of the application and the maximum civil penalty permitted by law of \$750.
(Government Code section 8214.15(b).)

- (2) If a commissioned notary public fails to administer the oath or affirmation as required by Government Code section 8205(a)(3), the recommended action is:

Revocation of the commission and the maximum civil penalty permitted by law of \$750.
(Government Code section 8214.15(b).)

Example: Notary public completed a jurat when the person signing the document did not appear in person before the notary public.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(I) Execution of any Certificate as a Notary Public Containing a Statement Known to the Notary Public to be False

Execution of a certificate that the notary public knew contained a false statement is a serious breach of honesty, credibility, truthfulness, and integrity, which are paramount to the office of a notary public. These characteristics are fundamental to the duties and responsibilities of a notary public and are depended upon by government, business, and the public.

- (1) If an applicant, during a previous commission as a notary public, executed any certificate that contained a statement known to the notary public to be false, the recommended action is:

Denial of the application commission and the maximum civil penalty permitted by law of \$1,500. (Government Code section 8214.15(a).)

- (2) If a commissioned notary public executed any certificate as a notary public that contained a statement known to the notary public to be false, the recommended action is:

Revocation of the commission and the maximum civil penalty permitted by law of \$1,500. (Government Code section 8214.15(a).)

In addition to the civil penalties described above, a notary public who willfully states as true any material fact that he or she knows to be false is subject to a separate civil penalty of \$10,000. (Civil Code section 1189.)

Example 1: The notary public backdates an acknowledgment.

Example 2: The notary public executes an acknowledgment for a person who did not appear in person before the notary public.

Example 3: The notary public accepts a Social Security card or matricula consular card as identification for an acknowledgment.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(m) Violating Government Code section 8223: Immigration Matters

Notaries public must be aware of restrictions connected to immigration matters and must fully understand those restrictions when advertising their services in order to avoid misleading the public or misrepresenting the authority of notaries public. In summary, Government Code section 8223 provides that a notary public with expertise in immigration matters or who provides immigration services cannot advertise in any manner that he or she is a notary public.

- (1) If an applicant, during a previous commission as a notary public, violated Government Code section 8223, the recommended action is:

Denial of the application and the maximum civil penalty permitted by law of \$1,500. (Government Code section 8214.15(a).)

- (2) If a commissioned notary public violates Government Code section 8223, the recommended action is:

Revocation of the commission and the maximum civil penalty permitted by law of \$1,500. (Government Code section 8214.15(a).)

Example: A notary public advertises both immigration and notary public services, not necessarily in the same advertisement.

NOTE: See also Discussion of Advertising Violations on page 32.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(n) Failure Upon Demand to Submit Any Remittance Payable to the Secretary of State or Failure to Satisfy Any Court-Ordered Money Judgment, Including Restitution

The Secretary of State will consider the failure upon demand to submit payment of a civil penalty for violation of notary public law or failure to satisfy any court-ordered money judgment, including restitution, in determining whether an applicant possess the requisite honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the office prior to appointing and commissioning a notary public and in determining whether to institute administrative action against a notary public.

- (1) If an applicant fails to submit any remittance payable to the Secretary of State or fails to satisfy any court ordered money judgment, including restitution, the recommended action is:

Denial of the application.

- (2) If a commissioned notary public fails to submit any payment of a civil penalty for violation of notary law or fails to satisfy any court ordered money judgment, including restitution, the recommended action is:

Revocation of the commission.

Example: Failure to remit full payment by the date ordered for a civil penalty imposed by a decision in an administrative action.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(o) Failure to Secure Journal or Official Seal

The sequential journal and the official seal are the exclusive property of the notary public.

Under Government Code sections 8206 and 8207, respectively, the journal and seal must be kept in a locked and secured area, under the notary public's direct and exclusive control. The circumstances in which the notary public must relinquish the journal or permit inspection and copying of journal transactions and the procedures the notary public must follow are specified in Government Code section 8206(d). The notary public shall not relinquish the seal to any other person, except to a court ordering surrender of the seal to the court as provided by Government Code section 8214.8 upon conviction of specified offenses.

- (1) If an applicant, during a previous commission as a notary public, failed to secure the sequential journal or the official seal, as required by Government Code sections 8206 and 8207 the recommended action is:

Denial of the application.

- (2) If a commissioned notary public fails to secure the sequential journal or the official seal, as required by Government Code sections 8206 and 8207, the recommended action is:

Revocation of the commission.

Example 1: A notary public gives his or her journal to another person to obtain signatures.

Example 2: A notary public leaves his or her journal or stamp unattended in an area accessible to others.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(p) Violation of Government Code Section 8219.5: Advertising in Language Other than English

Advertising in words other than in English may result in a misrepresentation due to “literal translation” of a word or phrase from one language to another without regard to the true meaning of the word or phrase in the language which is being translated. The literal translation of the phrase “notary public” into Spanish, hereby defined as “*notario publico*” or “*notario*,” is prohibited. Such a literal translation often creates a false assumption that the notary public is an attorney and can charge fees in conjunction with professional legal services.

A notary public who is not an attorney shall not advertise the services of a notary public in a language other than English by signs or other means of written communication with the exception of a single desk plaque, unless the sign or other written communication is accompanied by a notice in English and in the other language that sets forth the following: (1) the statement that: “I am not an attorney and, therefore, cannot give legal advice about immigration or any other legal matters;” and (2) the fees set by statute which a notary public may charge. See Discussion of Advertising Violations on page 32.

- (1) If an applicant, during a previous commission as a notary public, violated Government Code section 8219.5, the recommended action is:

Denial of the application and the maximum civil penalty permitted by law of \$1,500. (Government Code section 8214.15(a).)

- (2) If a commissioned notary public violates Government Code section 8219.5, the recommended action is:

Revocation of the commission and the maximum civil penalty permitted by law of \$1,500. (Government Code sections 8214.15(a) and 8219.5(d).)

- (3) If an applicant, during a previous commission as a notary public, violated Government Code section 8219.5, and the offense was not the first offense, the recommended action is:

Permanent denial of the application and the maximum civil penalty permitted by law of \$1,500. (Government Code sections 8214.15(a) and 8219.5(d).)

- (4) If a commissioned notary public violates Government Code section 8219.5, and the offense is not the first offense, the recommended action is:

Permanent revocation of the commission and the maximum civil penalty permitted by law of \$1,500. (Government Code sections 8214.15(a) and 8219.5(d).)

Example 1: Advertising as a notary public in a language other than English without providing the requisite notice in English and in the other language that the notary public is not an attorney and cannot give legal advice about immigration and any other legal matters and also without setting forth the statutory fees that can be charged by the notary public for notarial services.

Example 2: Using the words “*notario publico*” in any writing.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(q) Commission of an Act in Violation of Government Code sections 6203, 8214.2, 8225, or 8227.3 or Penal Code sections 115, 470, 487, or 530.5

"Every officer authorized by law to make or give any certificate or other writing is guilty of a misdemeanor if he or she makes and delivers as true any certificate or writing containing statements which he or she knows to be false." (Government Code section 6203(a).)

A notary public who knowingly and willfully with intent to defraud performs any notarial act in relation to a deed of trust on real property consisting of a single-family residence containing four (4) dwelling units or less, knowing the deed of trust contains any false statements or is forged, in whole or in part, is guilty of a felony. (Government Code section 8214.2(a).)

Any person who solicits, coerces, or in any manner influences a notary public to perform an improper notarial act knowing the act is improper, including any act required of a notary public in connection with the notary journal, is guilty of a misdemeanor. (Government Code section 8225(a).)

Any person who is not a duly commissioned, qualified, and acting notary public who represents or holds himself or herself out as a notary public, who assumes, uses or advertises the title of notary public in such a manner as to convey the impression that the person is a notary public, or who acts as a notary public, is guilty of a felony if done in relation to any document or instrument affecting title to, placing an encumbrance on, or placing an interest secured by a mortgage or deed of trust on, real property consisting of a single-family residence of four (4) dwelling units or less. (Government Code section 8227.3.)

"Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony." (Penal Code section 115.) Every person who, with the intent to defraud, counterfeits or forges the seal or handwriting of another or commits other acts, including falsifying the acknowledgment of any notary public or any notary public who issues an acknowledgment knowing it to be false, is guilty of forgery. (Penal Code section 470(b).)

Every person who takes money, labor, or real or personal property exceeding the value of \$950 is guilty of grand theft. (Penal Code section 487(a)).

Every person who willfully obtains the personal identifying information of another person, including the name, address, checking account information, tax identification number, driver's license information, or other personal identifying information, and who uses that information for any unlawful purpose, including intending to obtain, or attempting to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a misdemeanor or a felony at the discretion of the court. (Penal Code section 530.5.)

- (1) If an applicant has violated Government Code sections 6203, 8214.2, 8225, or 8227.3 or Penal Code sections 115, 470, 487, or 530.5, the recommended action is:

Denial of the application.

- (2) If a commissioned notary public has violated Government Code sections 6203, 8214.2, 8225, or 8227.3 or Penal Code sections 115, 470, 487, or 530.5, the recommended action is:

Revocation of the commission.

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VIOLATION OF GOVERNMENT CODE SECTION

8214.1(r) Willful Failure to Provide Access to the Notary Public Journal Upon Request by a Peace Officer

A notary public is required to surrender the notary public journal upon request to a peace officer acting in his or her official capacity and within his or her authority in the course of an investigation of a criminal offense. To request the journal, the peace officer must have reasonable suspicion to believe the journal contains evidence of a criminal offense. To seize the journal, the officer must have probable cause. If the journal is not present when the request is made, the notary public must surrender the journal to the peace officer as soon as possible. (Government Code section 8206(d).)

- (1) If an applicant, during a previous commission as a notary public, failed to provide access to the notary public journal upon request by a peace officer, the recommended action is:

Denial of the application and the maximum civil penalty permitted by law of \$2,500. (Government Code section 8214.21.)

- (2) If a commissioned notary public fails to provide access to the notary public journal upon request by a peace officer, the recommended action is:

Revocation of the commission and the maximum civil penalty permitted by law of \$2,500. (Government Code section 8214.21.)

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DISCUSSION OF ADVERTISING VIOLATIONS

A significant number of the investigations and disciplinary hearings conducted by the Secretary of State relate to alleged advertising violations. Notaries public must be aware of certain restrictions and must fully understand those restrictions when advertising to avoid misleading the public or misrepresenting the authority of notaries public.

In many cases, a business owner, who is not a notary public, employs a notary public to provide such services. If the business owner provides immigration services and advertises both the immigration and notary public services, the owner may be putting the commission of the notary public at risk. The same applies if the business owner advertises the literal translation of “notary public” into Spanish or advertises notary public services in a language other than English without posting the required statutory notice. These advertising violations also may prompt the Secretary of State to conduct an investigation of the notary public, which could result in the suspension or revocation of the commission and the loss of notary public services by the business.

Consider the following scenarios:

- (1) A notary public advertises on business cards and on fliers the services of petitions of immigration (*peticiones de inmigracion*) in conjunction with notarizations (*notarizaciones*).
- (2) A notary public advertises in a storefront window both immigration and notarization services.

Are these advertisements a violation of the law? Is the notary public, as an employee of the business, in violation of the law? The answer to both questions above is “yes.” One of the most common advertising violations involves a notary public that advertises immigration and notary public services. Government Code section 8223 states in part:

“No notary public who holds himself or herself out as being an immigration specialist, immigration consultant or any other title or description reflecting an expertise in immigration matters shall advertise *in any manner whatsoever* that he or she is a notary public.” (Emphasis added.)

A notary public who advertises that he or she performs immigration services and also performs notarizations is in violation of Government Code section 8223 and is subject to disciplinary action in accordance with Government Code section 8214.1(m). The Secretary of State may deny an appointment or suspend or revoke the commission of a notary public who advertises in this manner. In addition, a violation of Government Code section 8214.1(m) is punishable by a civil penalty of up to one thousand five hundred dollars (\$1,500). (Government Code section 8214.15(a).)

Words such as “*ciudadanía*” (citizenship), “*inmigración*,” (immigration) or “*serv. inmigración*” (immigration services) may be interpreted as having expertise in immigration matters. The intent of this statute is to prevent a person who has an expertise in immigration matters from misrepresenting his or her authority, thereby misleading the public.

Another form of an advertising violation, though not as common, involves the literal translation of the phrase “notary public” into Spanish or the notary public who advertises the services of a notary public in a language other than English without posting the required statutory notice:

Consider the following scenarios:

- (1) A notary public advertises his or her services with a sign, which states “Notario Publico.”
- (2) A notary public’s advertisement contains the word “*notarizaciones*,” which is the Spanish literal translation of “*notarizations*,” without posting the required notice.

Are these advertisements a violation of the law? Is the notary public, as an employee of the business, in violation of the law? Again, the answer to both questions is “yes.” Government Code section 8219.5 provides in part:

(a) Every notary public who is not an attorney who advertises the services of a notary public in a language other than English by signs or other means of written communication, with the exception of a single desk plaque, shall post with that advertisement a notice in English and in the other language which sets forth the following:

- (1) This statement: I am not an attorney and, therefore, cannot give legal advice about immigration or any other legal matters.
- (2) The fees set by statute which a notary public may charge.

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(c) Literal translation of the phrase “notary public” into Spanish, hereby defined as “notario publico” or “notario,” is prohibited. For purposes of this subdivision, “literal translation” of a word or phrase from one language to another means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language which is being translated.

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In many countries outside the United States, an individual must be a duly licensed attorney before obtaining a notary public commission. In Latin American countries, the phrase “*notario publico*” implies that the person is a practicing attorney in that country, which is not the law in the State of California. Under California law, a person may be appointed and commissioned as a notary public without being a licensed attorney.

Government Code section 8219.5(c) prohibits the literal translation of the phrase “notary public” into the Spanish language term “*notario publico*” because the term may mislead Spanish-speaking persons.

The Spanish language term “*notario publico*” often creates a false assumption that the notary public is a practicing attorney and can charge fees in conjunction with providing professional legal services.

Though “*notario publico*” is the literal Spanish phrase for “notary public,” there are other words or phrases, which, when translated from one language to another, cause a misunderstanding of the level of authority exercised by notaries public in the State of California. If a notary public advertises his or her services using words or phrases in a language other than English, a notice must be posted with the advertisement in English and in the other language, as specified in Government Code section 8219.5(a) cited above. A notary public who advertises words or phrases such as “*notarizaciones*,” “*notarizamos*,” or “*notarizados*,” which are forms of the word “notarization,” or any other word or phrase in a language other than English, must post the required notice with the advertisement.

A notary public who advertises the phrase “notary public” in Spanish or who advertises the services of a notary public in a language other than English without the required notice is subject to disciplinary action in accordance with Government Code section 8214.1(p). The Secretary of State may deny an appointment or suspend or revoke the commission of a notary public who advertises in this manner. In addition, a violation of Government Code section 8214.1(p) is punishable by a civil penalty of up to one thousand five hundred dollars (\$1,500). (Government Code Section 8214.15(a).)

The law is specific regarding the disciplinary action to be taken for a notary public who fails to comply with Government Code section 8219.5(a) and requires that their commission be suspended for a period of not less than one year or revoked on the first offense. The commission of the notary public must be revoked permanently on the second offense. (Government Code section 8219.5(d).)

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FACTORS AND EVIDENCE IN MITIGATION

In determining the proper penalty or action within the established disciplinary guidelines, the following factors and evidence, if presented, should be considered in mitigation of the offense, facts or circumstances:

- (1) Evidence that the respondent accepted and complied with a suggested resolution to a consumer complaint as recommended by the Secretary of State or other agency.
- (2) Evidence of voluntary participation in a program relating to the applicable laws and regulations and the duties and responsibilities of a notary public.
- (3) Evidence of resolution of consumer complaints with a subsequent change in business practice.
- (4) Evidence that the respondent fully cooperated with the investigation conducted by the Secretary of State, other law enforcement or regulatory agencies, and/or injured parties.
- (5) Evidence satisfactory to the Secretary of State of personal and professional rehabilitation.
- (6) Recognition by the respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.
- (7) Passage of considerable time since the violation(s) with no evidence or indication of recurrence or evidence or indication of any other misconduct.

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FACTORS AND EVIDENCE IN AGGRAVATION

In determining the proper penalty or action within the established disciplinary guidelines, the following factors and evidence, if presented, should be considered in aggravation of the offense, facts or circumstances:

- (1) Prior warnings or notices of violations from the Secretary of State.
- (2) Prior demonstration of incompetence.
- (3) Prior history of formal disciplinary action.
- (4) Failure to submit certified copies of the notary public's journal entries to the Secretary of State for inspection within the time frame specified in a written request from the Secretary of State for such copies.
- (5) Evidence that the violation was knowingly committed and/or was premeditated.
- (6) Failure to cooperate with an investigation conducted by the Secretary of State.
- (7) Evidence the unlawful act was part of a pattern of practice.
- (8) Failure to comply with a request of the Secretary of State for corrective action.
- (9) Currently on a grant of probation by a court.
- (10) Failure to pay a court judgment to a victim.
- (11) Violation of a previous court order.
- (12) Any other conduct that constitutes fraud or gross negligence.
- (13) If immigration services are provided, failure to file and maintain a bond pursuant to Chapter 19.5 of Division 8 of the Business and Professions Code (commencing with section 22440).
- (14) Failure to abide by a decision and disciplinary sanctions, including payment of a civil penalty, imposed pursuant to an administrative action.
- (15) Failure to abide by the terms of a stipulated settlement.

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STIPULATED SETTLEMENTS

In instituting administrative actions, the Secretary of State must consider stipulated settlements to promote cost effectiveness and expedite disciplinary decisions if the terms of such agreements achieve the disciplinary objectives of the Secretary of State. After receipt of a notice of defense, legal counsel representing the Secretary of State must contact the respondent, or legal counsel representing the respondent, to inquire as to the interest in a stipulated settlement. The Secretary of State must consider the facts of the case and factors and evidence in mitigation and aggravation in reviewing a stipulated settlement. Generally, an order in a stipulated decision involving the denial, revocation or suspension of an appointment and commission will require respondent to pay a civil penalty, if authorized by law.

If it is unlikely that the disciplinary objectives of the Secretary of State will be satisfied through a stipulated settlement, legal counsel representing the Secretary of State shall schedule an administrative hearing before an administrative law judge and proceed with the case.

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RECOMMENDED LANGUAGE FOR PROPOSED DECISIONS

The Secretary of State requests that a proposed decision issued by an administrative law judge include the following information:

- (1) Any defense presented by the respondent in the Findings of Fact.
- (2) Findings and listing of evidence regarding mitigation, aggravation, and rehabilitation, when appropriate.
- (3) If denying, revoking or suspending a commission, an order for sanctions corresponding to the recommended actions contained in these disciplinary guidelines, including civil penalties, unless the justification for the departure from the disciplinary guidelines is clearly set forth in the findings and supported by the listed evidence.
- (4) If suspending a commission, an order that the respondent notify their customers and future customers of the suspension by posting or circulating a notice that a suspension is in effect and the notary public cannot perform any notarial services during the period of suspension.
- (5) If imposing a civil penalty, an order that the respondent remit payment of the civil penalty to the Secretary of State by a specific date.
- (6) If revoking a commission, an order that the respondent relinquish the notary public journal to the clerk of the county in which the official oath is filed within thirty (30) calendar days of the effective date of the decision in accordance with Government Code section 8209.
- (7) If revoking a commission, an order that the respondent immediately destroy or deface all notary public seals in accordance with Government Code section 8207.
- (8) If imposing sanctions on a notary public who has resigned his or her commission or whose commission has expired, an order reciting findings of fact and stating the conclusion that the facts would have constituted grounds for suspension or revocation of the commission if the commission had still been in effect, pursuant to Government Code section 8214.4.

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THE NOTARY PUBLIC DISCIPLINARY HEARING PROCESS

Every notary public applicant and commissioned notary public is entitled to a hearing before an administrative law judge before an application is denied or a commission is suspended, revoked, or a civil penalty is imposed.

Hearings before an administrative law judge are conducted according to the Administrative Procedures Act, which is found in the Government Code beginning at section 11500.

If the Secretary of State concludes that the laws governing the conduct of notaries public or those applying to be notaries public have been violated, the Secretary of State will notify the notary public applicant or commissioned notary public in writing detailing the specific charges and laws violated. If an applicant's application is denied, the formal reasons are called a Statement of Issues. If a notary public's commission is to be suspended or revoked or a civil fine imposed, the document is called an Accusation. Both are provided to the applicant or notary public (served) by certified mail from the Secretary of State.

Once a Statement of Issues or Accusation is served on the applicant or notary public, the applicant or notary public is then referred to as the respondent. The respondent may choose to challenge or contest the charges by requesting a hearing. If the respondent wishes to have a hearing on the charges, the respondent must send a Notice of Defense to the Secretary of State within 15 days. Or, if the respondent decides not to contest the Secretary of State's charges, a default decision is written by the Secretary of State containing the specific charges and laws that were violated as outlined in either the Statement of Issues or the Accusation served on the respondent.

If the respondent decides to have a hearing, an attorney in the Secretary of State's office is assigned to represent the agency's interests in the case. The respondent may either represent himself or herself or be represented by an attorney retained by the respondent. The attorney for the Secretary of State will review the case and may enter into discussions with the respondent's attorney, or the respondent if the respondent does not retain an attorney, to resolve the case by mutual agreement or stipulation without a hearing.

If no agreement can be reached, the case proceeds to a hearing. Hearings are held at several locations in California and the respondent is notified of the date, time, and location well in advance of the hearing in order to allow time for preparation. The respondent, as well as the Secretary of State, may be required to exchange evidence to be presented at the hearing beforehand, which is called discovery.

At the hearing, the Secretary of State, represented by its attorney, will present evidence in the form of documents or testimony from witnesses to demonstrate the charges against the respondent. The respondent or respondent's attorney may examine all documents presented and may ask questions of any witness. When challenging the Secretary of State's denial of an

application, the burden of demonstrating that the respondent meets the requirements for a notary public commission (including the respondent's honesty, credibility, truthfulness and integrity) is on the respondent. When revoking or suspending an existing notary public commission, the burden of demonstrating the substance of the charges against the respondent is on the Secretary of State. The administrative law judge will rule on all matters disputed or raised by either side during the hearing.

After the Secretary of State presents its initial evidence, the respondent or respondent's attorney may present any relevant evidence he or she wishes to dispute the charges raised by the Secretary of State. The attorney for the Secretary of State may also examine any documents presented or question any witness. Respondent's guilt for criminal convictions may not be re-litigated in an administrative proceeding. The record of a criminal conviction conclusively establishes the fact of conviction and reliance on that fact in the administrative proceeding is proper when the criminal offense has a substantial relationship to the qualifications, functions or duties of a notary public.

The administrative law judge generally will not decide the case on the day of the hearing. The judge will issue a written proposed decision about a month after the hearing and both the respondent and Secretary of State will receive a copy of the proposed decision.

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SECRETARY OF STATE REVIEW AFTER HEARING

Pursuant to Government Code section 11517, the Secretary of State may review a contested case. The Secretary of State’s review begins within 100 days of receiving a proposed decision from an administrative law judge in a contested case. During that period, the Secretary of State may adopt, change, or reject the proposed decision from the administrative law judge.

If the Secretary of State rejects a proposed decision, the Secretary of State may decide the contested case on the record. A copy of the record will be made available to the respondent at cost.

If the Secretary of State rejects the proposed decision of the administrative law judge and elects to decide the case on the record, the Secretary of State will notify the respondent in writing of the opportunity to present written argument. The respondent has up to 30 days from the mailing of the notification to provide additional written argument to the Secretary of State.

The Secretary of State will then decide the case based on the record and any written argument presented by the respondent. The Secretary of State will issue a final decision not later than 100 days after the rejection of the proposed decision of the administrative law judge. If the Secretary of State has ordered a transcript of the proceedings before the administrative law judge, the Secretary of State’s final decision will be issued not later than 100 days after the receipt of the transcript of the proceedings. The Secretary of State may find that special circumstances require a delay in issuing the final decision and upon such a finding will issue an order delaying the decision for no more than an additional 30 days, which also will specify the reasons for the delay.

The Secretary of State’s final decision will be filed immediately as a public record and a copy will be served by the Secretary of State on the respondent and his or her attorney, if any.

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PETITION FOR RECONSIDERATION

Pursuant to Government Code section 11521, the Secretary of State may order reconsideration of all or part of a case on the motion of the Secretary of State or on petition of any party to the proceeding. To petition for reconsideration, a party must submit a written request to the Secretary of State within the statutory allotted time. The Secretary of State shall not grant a petition for reconsideration unless the petition contains evidence and argument in support of the petition that provides a basis for the Secretary of State to reconsider the case and that could not have been presented at the time of the hearing before the administrative law judge. Any evidence or argument supporting the petition must be submitted to the Secretary of State in writing. Oral evidence or argument will not be accepted.

The power of the Secretary of State to order a reconsideration shall expire thirty (30) calendar days after the mailing of a decision to the respondent, or on the date set by the Secretary of State as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the Secretary of State may grant for the purpose of filing an application for reconsideration. A letter to the respondent, accompanying the decision, shall specify the time in which a petition for reconsideration must be submitted. If the Secretary of State requires additional time to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, the Secretary of State may grant a stay of that expiration for no more than ten (10) calendar days for the sole purpose of considering the petition. If the Secretary of State does not act within the allotted time period for ordering reconsideration, the petition shall be deemed denied.

Pursuant to Government Code section 11521(b), the case may be reconsidered by the Secretary of State on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Government Code section 11517.

In accordance with Government Code section 11523, judicial review may be sought by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure. Except as otherwise provided, the petition for a writ of mandate shall be filed with the court within thirty (30) calendar days after the last day on which reconsideration may be ordered by the Secretary of State. The right to petition for judicial review shall not be affected by the failure of petitioner to seek reconsideration before the Secretary of State.

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DEFAULTS AND UNCONTESTED CASES

Pursuant to Government Code section 11520, the Secretary of State may vacate the default decision and grant a hearing on a showing of good cause. Good cause includes, but is not limited to, any of the following:

- (1) Failure of the person to receive notice served pursuant to Government Code section 11505.

Note: Failure of the respondent to receive the accusation or statement of issues and accompanying information when notice was served to the respondent at the latest address on file with the Secretary of State and the respondent failed to notify the Secretary of State of an address change is not grounds to vacate the default decision.

- (2) Mistake, inadvertence, surprise, or excusable neglect.

To request that the default decision be vacated and a hearing be granted, the respondent must serve a written motion to the Secretary of State within seven (7) days after service on the respondent of the default decision. The Secretary of State shall not vacate the default decision and grant a hearing unless the written motion contains evidence and argument in support of the written motion that provide a showing of good cause and a basis for the Secretary of State to reconsider the case.

A letter to the respondent, accompanying the default decision, shall specify the time in which a written motion must be submitted. The power of the Secretary of State to vacate the default decision and grant a hearing shall expire seven (7) calendar days after the mailing of the default decision to the respondent.

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REINSTATEMENT OR REDUCTION OF PENALTY

Pursuant to Government Code section 11522, a person whose commission as a notary public has been revoked or suspended may petition the Secretary of State for reinstatement of the commission or reduction of penalty after a period of not less than one (1) year has elapsed from the effective date of the decision or from the date of the denial of a similar petition.

If the petitioner's commission was suspended and has, or would have expired within six (6) months of the date the Secretary of State receives the petition, or was revoked, any Petition for Reinstatement as a Notary Public or Petition for Reinstatement as a Notary Public and Reduction in Penalty shall be treated as a request for a new notary public commission. If the petition is granted, the terms and conditions of the reinstatement shall require the petitioner to (i) complete and submit a Notary Public Application along with the required photograph and fee and (ii) meet all the applicable requirements of Government Code sections 8201 and 8201.1 and California Code of Regulations, title 2, sections 20800.5 and 20803 prior to issuance of a new notary public commission.

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PETITION FOR REINSTATEMENT OR REDUCTION OF PENALTY

A person may petition for reinstatement of a revoked or suspended commission, or for a reduction in penalty, by filing a petition with the Secretary of State within the time prescribed above. The petition shall be entitled "Petition for Reinstatement as a Notary Public," "Petition for Reduction in Penalty" or "Petition for Reinstatement as a Notary Public and Reduction in Penalty." The petition shall contain the following information and supplementary documentation:

- (1) The petition caption shall contain the name of the notary public and the Secretary of State's administrative proceeding case number.
- (2) Any written argument or evidence the petitioner wishes to submit for consideration by the Secretary of State. No oral argument or evidence may be presented by petitioner.

Within 15 calendar days of receiving the petition, the Secretary of State shall send written notice to the California Attorney General of the filing of the petition. Any written argument the Attorney General and complainant's counsel wish to submit for consideration by the Secretary of State shall be submitted to the Secretary of State within 45 calendar days of the date notice was mailed to the Attorney General. No oral argument may be presented by the Attorney General or by any party.

When considering a petition for reinstatement or reduction in penalty, the primary concern of the Secretary of State is whether the evidence presented by the petitioner relates to his or her rehabilitation. The petitioner has the burden of demonstrating that he or she possesses the necessary and current qualifications and skills to safely perform the duties of a notary public within the scope of the current law. In determining whether to grant a reduction of penalty, the Secretary of State may consider, but is not limited to, the following:

- (1) The original violation(s) for which disciplinary action was instituted against the petitioner:
 - (a) Type, severity, number, and duration of violation(s).
 - (b) Whether the violation(s) involved intent, negligence or other improper conduct.
 - (c) Actual or potential harm to the public, customers or others.
 - (d) Length of time since the violation(s) was committed.
 - (e) Cooperation or lack of cooperation of the petitioner in the investigation of the original offense(s).

- (2) Prior actions by the Secretary of State, any state, local or federal agency or court including:
 - (a) Compliance with all terms of probation, parole, previous discipline or other lawfully imposed sanction, including any order of restitution.
 - (b) Whether the petitioner is currently on or has been terminated from probation or other lawfully imposed sanction.
 - (c) Legal and regulatory history prior to and since the violation(s).
- (3) The attitude of the petitioner toward his or her commission of the original violation(s) and in regard to compliance with legal sanctions and rehabilitative efforts.
- (4) Documented rehabilitative efforts including:
 - (a) Efforts to maintain and/or upgrade professional skills and knowledge through education or other methods.
 - (b) Efforts to establish safeguards to prevent repetition of the original violation(s), including changes or modifications in policies, structure, systems, advertising, or behavior applicable to the performance of the duties and responsibilities of a notary public.
 - (c) Voluntary restitution to those affected by the original violation(s).
 - (d) Participation in appropriate self-help and/or rehabilitative group.
 - (e) Participation in professional organizations or associations.
- (5) Assessment of the rehabilitative and corrective efforts of the petitioner, including:
 - (a) Whether efforts relate to the original violation(s).
 - (b) Date rehabilitative efforts were initiated.
 - (c) Length of rehabilitative efforts and corrective actions.
 - (d) Whether rehabilitative efforts and corrective actions were voluntary and self-motivated, or imposed by order of a government agency or court and complied with as a term or condition of probation.

- (e) Reputation of the petitioner for honesty, credibility, truthfulness, integrity, professional ability, and good character since the commission of the original violation(s).
 - (f) Nature and status of continuing rehabilitative efforts.
 - (g) Compliance or non-compliance with all laws and regulations since the date of the original violation(s).
 - (h) Cooperation or lack of cooperation of the petitioner in the review conducted by the Secretary of State of the Petition for Reduction of Penalty and the facts surrounding the petition.
- (6) Nothing in these disciplinary guidelines shall be construed to prevent the Secretary of State from considering any other appropriate and relevant material not specified herein in order to assess the Petition for Reinstatement as a Notary Public, Petition for Reduction of Penalty, or Petition for Reinstatement as a Notary Public and Reduction in Penalty.
- (7) Any statements by the petitioner or witnesses submitted in support of the petition are preferred by the Secretary of State to be in the form of an affidavit or declaration rather than merely a letter or unsworn statement.

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