

Honorable Secretary Williams,

As a notary for the State of Colorado, and an active member of the Colorado Municipal Clerks Association, I submit to you the following comments regarding the proposed Rules for Colorado Notary (8 CCR 1505-11).

Proposed Rule 2.1.3 The proposed rule is creating the need to take training AND pass an exam to renew a notary. There is no statutory provision that requires a Colorado notary to take an exam for renewal purposes. Rather, C.R.S. §24-21-522 only requires *new* applicants to take an exam. The statute provides that “An applicant that does not hold a commission in the state must pass an examination,” meaning that one holding a commission does not have to pass an examination.

Moreover, under C.R.S. § 24-21-532, grounds for denial; “failure to pass a renewal exam” is not listed as a reason for which the Secretary of State can refuse to renew a commission. For this reason, and because §24-21-522 only requires *new* applicants to take an exam, this rule will run afoul of the State Administrative Procedure Act, which provides no rule shall be adopted that conflicts with state law and any rule promulgated by a state agency that does conflict shall be void. C.R.S. §24-4-103(4)(b)(IV), (8)(a).

C.R.S. § 24-21-532 does allow conditions to be imposed if there exist grounds to deny, renew, revoke or suspend. Should you believe a renewal examination is beneficial, it might be more prudent to require such only in connection with some sort of disciplinary action against a notary agent. Requiring every current notary to study for, pay for, and retake an examination to renew punishes those who have faithfully fulfilled their duties under the law and will only discourage renewals.

In addition to discouraging renewals, the increase in cost and loss of time that re-examination will cause will greatly impact small rural municipalities and the municipal clerks who serve as notary for the benefit of their community. The proposed process for granting a renewal would create a financial hardship on those communities. Many of the notaries do not charge a fee for their notary services and to pay for an additional fee may be cost prohibited or too burdensome for the notary or a small town.

The Colorado Municipal Clerks Association believes in providing opportunities for professional growth through continued education and collaborates with the Secretary of State office to provide our members with timely training on any new legislative updates regarding the notary program. This is the first time since 2014 the notary rules have even changed. We will educate ourselves on the changes and provide opportunity for other Colorado notaries to participate.

Proposed Rule 4.1 is already set forth in §24-21-519(10)(b), C.R.S. Rule 4.2 appears to give the Secretary of State authority over a notary’s employer, which I do not believe is addressed in the Revised Uniform Law on Notarial Acts. The responsibility of an

employer upon the resignation of a notary seems to create a burden not provided by law. In addition, the Secretary of State's office should be sensitive to the type of personal identifiable information contained within one's journal; not to have it be left to the employer to manage. Since the notary is serving as a "state agent", why is the employer responsible for a state officer's document? And if you are going to make the employer responsible then they should be able to collect any fee to create a copy, transmit or any action that incurs cost be remedied to provide the document back to the State Department. In view of our fiscal responsibilities as public servants, our municipal constituents would not be happy to know the municipality has this type of liability and as "in-kind" requirement. Since the Secretary of State has a database of notaries, access to vital records, and with its astute use of current technology, it would seem the department would be able to contact and retrieve at their cost, any notary journal. For those municipal clerks and deputy clerks who serve as a notary for their community, this proposed rule creates a financial hardship on municipalities.

Respectfully submitted,

Susan M. Ortiz, MMC

City Clerk, City of Greenwood Village