

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.15.101 through 44.15.105) PROPOSED AMENDMENT AND
and adoption of New Rules I , II, III,) ADOPTION
and IV pertaining to notaries public)

TO: All Concerned Persons

1. On October 5, 2009, at 11:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206, State Capitol Building, at Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on September 28, 2009, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 444-5375; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

44.15.101 APPLICATION PROCESS FOR A COMMISSION APPOINTMENT OR REAPPOINTMENT AS A NOTARY PUBLIC (1) Requests for appointment or reappointment as a notary public are not considered submitted if any of the requested documentation is missing, deficient, or if the correct fee has not been paid.

(1) (2) A person seeking an ~~commission~~ appointment or reappointment as a notary public shall make an application on a form prescribed by the Secretary of State which ~~contains the following information~~ requests the information required by 1-5-409(1), MCA, and such other information as shall be deemed relevant to identifying and contacting the person during or after the term of office and shall affirm under oath that the person:

- ~~(a) name of the applicant;~~
- ~~(b) applicant's address, e-mail address, and phone number;~~
- ~~(c) name of employer;~~
- ~~(d) employer's address, e-mail address, and phone number;~~
- ~~(e) date of birth;~~
- ~~(f) the date of expiration of the applicant's current notary commission (if applicable); and~~

~~(g) name under which the previous commission was issued if different than the name used on the application.~~

~~(2) The application must state if the applicant:~~
~~(a) has been a resident of the state of Montana for over one year;~~
~~(b) (a) is at least 18 years old;~~
~~(c) (b) has never been convicted of a felony; and~~
~~(d) (c) has never had a notary commission or bond denied, revoked, or restricted in any state; and~~
(d) is a resident of Montana prior to appointment and for the duration of the commission pursuant to 1-5-402(3), MCA.

~~(3) The applicant must affirm under oath that the information on the application is true and correct. The person seeking appointment as a notary shall submit the required application, bond, and fees within 30 days before or after the effective date of the bond and provide proof that they have satisfactorily completed a training program certified by the Secretary of State.~~

(4) A person seeking reappointment as a notary shall submit the required application form, bond, and fees within 30 days before or after the effective date of the bond and provide proof that they have satisfactorily completed a training program certified by the Secretary of State if the person has been notified that such training is required pursuant to 1-5-402(2), MCA.

AUTH: 2-4-201, MCA
IMP: 1-5-405, MCA

REASON: The amendment is necessary due to the passage of SB 299 by the 2009 Legislature which created the categories of "appointment" and "reappointment" for notaries public. The rule is amended to incorporate these terms. Sections (3) and (4) are added to include in rule the 30-day filing period that is set forth in section 1-5-405(3), MCA.

44.15.102 APPLICATION FEES (1) The An applicant for appointment or reappointment as a notary shall submit a \$25 nonrefundable application fee.
(2) Application documents that have been returned twice for correction must be accompanied by an additional \$10 fee if submitted a third or subsequent time.

AUTH: ~~1-5-408~~ 2-15-405, MCA
IMP: 1-5-408, MCA

REASON: The amendment is necessary to clarify that the \$25 nonrefundable application fee applies to both appointment and reappointment applications. The new fee in (2) reflects the additional costs incurred for multiple processing of the same documents. The new fee will affect less than 100 applicants per year and will result in less than \$1,000 in additional annual revenue.

44.15.103 NOTARY BOND (1) The applicant for appointment or reappointment as a notary shall submit with the application and fee, a bond from an approved bonding company in the amount of \$10,000 for the duration of the period of the notary commission. The bond form must specify the effective date of the bond, the name of the principal, and the principal's city of residence, and contain the

principal's signature. The bonding company shall notify the Secretary of State's office if the bond is canceled or otherwise not honored.

(2) A rider or other such endorsement issued by the bonding agency must be submitted with all requests for changes to the effective date, the principal's name, or city of residence.

AUTH: 2-4-201, MCA
IMP: 1-5-405, MCA

REASON: The amendment is necessary to specify the required information for the bond form and to clarify that the required information must be submitted on the bond form.

44.15.104 CANCELLATION OF COMMISSION (1) If the Secretary of State receives information or has reason to believe a notary public has engaged in activities that constitute just cause to revoke a commission of a notarial officer, then the Secretary of State may revoke the commission of a notary public. If the notary believes that the commission should not be revoked, the notary may request a hearing following the formal or informal hearing procedures for contested cases found in MAPA.

(a) and (2) remain the same.

AUTH: 2-4-201, MCA
IMP: 1-5-404, 1-5-405, 2-4-604, MCA

REASON: The rule is reasonably necessary to clarify that a notary has the option of requesting a hearing prior to the Secretary of State revoking a commission, but that a hearing is not required.

44.15.105 FOREIGN NOTARY, APOSTILLE FEES AND FEDERAL AUTHORITY CERTIFICATES OF APOSTILLE OR AUTHENTICATION (1) The applicant shall submit a \$10 nonrefundable fee for each document for which a certificate is to be affixed.

(2) A priority fee of \$20 will apply to requests for document certification when an appointment has not been previously scheduled and the customer requires immediate service.

AUTH: ~~1-5-408~~ 2-15-405, MCA
IMP: 1-5-408, 1-5-607, 1-5-608, MCA

REASON: The amendment is necessary to clarify that the \$10 fee applies to each document. The new fee in (2) reflects the additional costs incurred in processing a priority request, and it is in line with the priority fees charges in other sections of the Secretary of State's office. The new fee will affect less than 100 individuals and will result in less than \$2,000 in additional annual revenue.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS (1) As used in this subchapter, the following definitions apply:

(1) "Appointment" means that a person is eligible to receive a commission as a notary public because:

(a) they have never held a notary commission in the state of Montana; or
(b) they have held a previous notary commission, but were not reappointed within the statutorily allowed period.

(2) "Reappointment" means that a person is eligible to receive a commission as a notary public because:

(i) they hold a current notary commission; or
(ii) their notary commission expired within 30 days.

AUTH: 2-4-201, MCA

IMP: 1-5-401, 1-5-402, MCA

REASON: The rule is necessary due to the passage of SB 299 by the 2009 Legislature which created the categories of "appointment" and "reappointment" for notaries public. The rule defines terms that pertain to the commissioning of notaries public that are not defined in statute.

NEW RULE II CERTIFICATION OF TRAINING PROGRAMS AND INSTRUCTORS (1) The Secretary of State will certify individuals or entities and courses for live and on-line training programs that will assure consistency and completeness of the information provided to students regardless of the methodology, format, or entity providing the training.

(2) An entity or individual wishing to provide the notary training required under 1-5-402, MCA, must submit to the Secretary of State all materials to be used in or distributed as a part of the course in order to receive authorization to conduct a certified course.

(3) Changes or modifications to any course or course material must be submitted to the Secretary of State's office prior to presenting the material.

(4) Within two business days after conducting a live or on-line course, the instructor or course administrator shall submit to the Secretary of State's office a list of those who satisfactorily completed the course.

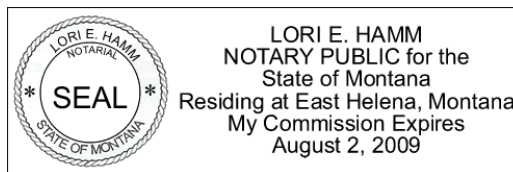
AUTH: 2-4-201, MCA

IMP: 1-5-402, MCA

REASON: The rule is necessary due to the passage of SB 299 by the 2009 Legislature which put in place requirements for notary training. The rule establishes the certification standards for notary training programs and instructors.

NEW RULE III NOTARY SEAL AND STAMP (1) All persons appointed or reappointed as a notary public for the state of Montana on or after October 1, 2009, shall provide a blue or black ink stamp which will contain the notarial seal as well as the notary's printed name, title, city or town of residence, and commission expiration

date as required by 1-5-416(e) and (f), MCA. The stamp shall be rectangular in shape, and approximately 1" x 2 ½" in size. An illustration of the required format is below:



(2) If any information contained in the seal and stamp changes during the term of the notary's commission, the notary must obtain a new stamp.

(3) The seal and stamp are the property of the notary. The notary is responsible for destroying the seal and stamp when it is replaced or upon termination of office.

AUTH: 2-4-201, MCA

IMP: 1-5-416, 1-5-419, MCA

REASON: The rule is necessary due to the passage of SB 299 by the 2009 Legislature which directed the use of blue or black ink for a notary's original signature and revised the requirements for the notarial seal and stamp. The rule provides specifications for the seal and stamp and provides guidance as to their replacement or destruction.

NEW RULE IV OFFICIAL NOTARY JOURNAL (1) An official notary journal shall be a bound book designed specifically for that purpose. It shall record:

(a) the name, address, and commission information of the notary, including but not limited to, the dates of commission, and the volume number if more than one journal was used;

(b) the details of each notarial act performed, including the signature of individuals, as required by 1-5-416(g), MCA; and

(c) other information of a nonprivate nature which may be relevant to proving the identity of the signer and the circumstances of the event.

(2) The notary journal is considered a public document and any private information which identifies a signer's identity such as a social security number or driver's license number shall not be recorded in the journal.

(3) The notary journal is the property and responsibility of the notary and shall remain in the possession or under the control of the notary at all times.

(4) Upon resignation, revocation, or death, the notary or the notary's legal representative shall transfer the notary's journals to the clerk and recorder's office in the county in which the notary resided.

AUTH: 2-4-201, MCA

IMP: 1-5-416, 1-5-419, MCA

REASON: The rule is reasonably necessary due to the passage of SB 299 by the 2009 Legislature which mandated that a notary public keep and maintain an official notary journal. The rule provides detailed specifications and requirements for the notary journal and affirms that the notary journal is a public document.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 444-5375; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., October 8, 2009.

6. Jorge Quintana, Secretary of State's office, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on July 28, 2009, and by telephone call the week of August 10, 2009.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 31st day of August, 2009.