

DOUGLAS LA FOLLETTE



SECRETARY OF STATE
WISCONSIN

February 18, 2009

Dear Attorney General Van Hollen,

I am writing to request your assistance in obtaining a legal opinion on a matter currently before the Office of the Secretary of State. As you are no doubt aware, the Office of the Secretary of State has no attorney on staff and depends on the Department of Justice for legal guidance. Historically, Assistant Attorney General Mary Burke of DOJ has assisted this agency as the need arises.

Specifically, this inquiry has to do with attorneys whose licenses to practice law have been suspended (temporarily or otherwise) or revoked and who have, or are requesting, permanent notary commissions from the Office of the Secretary of State. Per recent guidance from Ms. Burke at DOJ:

The criteria for obtaining a notary public commission have been established by the Legislature in Wis. Stat. s. 137.01. The Legislature specified in Wis. Stat. s. 137.01(2)(a) that an attorney licensed to practice law in Wisconsin may obtain a permanent notary public commission, except as provided in Wis. Stat. s. 137.01(2)(am). The Legislature, in Wis. Stat. s. 137.01(2)(am), then limited attorneys whose law licenses have been suspended or revoked to four-year notary public terms (which can be renewed) upon reinstatement of their law licenses: "If a United States resident has had his or her license to practice law in this state suspended or revoked, upon reinstatement of his or her license to practice law in this state, the person may be entitled to receive a certificate of appointment as a notary public for a term of 4 years. An eligible notary appointed under this paragraph is entitled to reappointment for 4-year increments."

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The plain language of s. 137.01(2)(am), on its face, applies to all attorneys whose licenses have been suspended and revoked. The statutory language does not distinguish between attorneys whose licenses have been suspended for relatively minor reasons and those suspended for more significant reasons. Nor does the statutory language confer the Secretary of State with any discretion to determine whether or not the 4-year term limitation of s. 137.01(2)(am) should be applied to attorneys whose licenses have been suspended for relatively minor reasons and reinstated

Wis. Stats. 137.01(2)(c) provides: "The supreme court shall file with the secretary of state notice of the surrender, suspension or revocation of the license to practice law of any attorney who holds a permanent commission as a notary public. Such notice shall be deemed a revocation of said commission."

The Office of Lawyer Regulation regularly sends notice to the Office of the Secretary of State of suspensions or revocations of attorney licenses for disciplinary reasons. These lists are checked against the permanent notary database, and permanent notary commissions held by the disciplined attorneys are revoked.

However, the Office of the Secretary of State recently learned of other law license suspensions which occur routinely and have not, up to the present, been reported to this Office. These include:

- 1) Suspensions issued by the Board of Bar Examiners (BBE) for attorney failure to comply with CLE reporting and attendance requirements. This is an administrative suspension and can be imposed by BBE without additional action by the court itself. There are 200-300 of these suspensions per year; perhaps 25% - 40% of these will eventually reinstate. BBE generates a notice of these suspensions once a year, usually in late May.
- 2) Suspensions issued by the State Bar of Wisconsin for attorney failure to pay dues or to provide attorney trust account information. This is an administrative suspension that does not require action by the court. There are approximately 300 of these suspensions per year; about 75% usually reinstate. The state bar generates a notice of these suspensions once a year in late October.

Because a decision in this case will have broad application, we would appreciate legal guidance on the following questions:

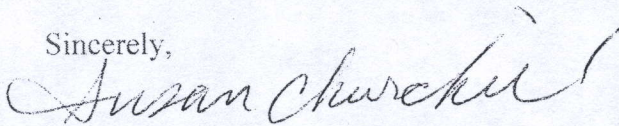
- A) What is the legal definition of "suspended or revoked" as relates to a law license according to Wis. Stat. s. 137.01? Are all attorney suspensions (including those described in items # 1 and 2 above) included in that definition with the result that those attorneys would therefore be ineligible for a permanent notary commission (but potentially eligible for a 4-year notary commission)?

B) Would this apply both to attorneys (with law license suspensions) applying for the first time for a notary commission and as well as to those who have existing permanent notary commission?

C) If the answer to B above is yes, what would be the effective date for commission revocation (given that the Office of the Secretary of State only just recently learned of these suspensions). In other words, would attorneys with permanent notary commissions who had been suspended in the past (and reinstated or not) have their permanent commissions revoked retroactively?

We appreciate your consideration, and will look forward to your reply. If you have questions in the meantime, or need further information, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Susan Churchill". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Susan Churchill
Deputy Secretary
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