

**220-RICR-50-05-2**

## **TITLE 220 – DEPARTMENT OF ADMINISTRATION**

### **CHAPTER 50 – DIVISION OF LEGAL SERVICES**

#### **SUBCHAPTER 05 - GENERAL**

PART 2 – Rules of Procedure for Investigating, Prosecuting, and Adjudicating Allegations against Notaries Public

#### **2.1 Introduction**

- A. These Rules of Practice and Procedure (“Rules”) are adopted by the Rhode Island Department of Administration (“Department”) as a result of Exec. Order No. 09-08, and pursuant to R.I. Gen. Laws §§ 42-11-1 *et seq.*, 42-35-1 *et seq.* and 42-92-1 *et seq.* for the purpose of investigating, prosecuting and adjudicating claims and charges against duly commissioned notaries in accordance with R.I. Gen. Laws § 42-30-10. Issues not addressed in these Rules or for which any party seeks clarification are to be considered in light of R.I. Gen. Laws §§ 42-11-1 *et seq.* and 42-35-1 *et seq.*
- B. These Rules shall govern the conduct of Notary Public investigations, prosecutions, and adjudications before the Department commenced after their effective date. These Rules shall be liberally construed to further the fair, prompt and orderly administration and determination of adjudicatory proceedings in conformity with the Rhode Island Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.* These Rules incorporate the Standards of Conduct for Notaries Public in the State of Rhode Island referenced and endorsed in Exec. Order No. 09-25 (“Standards”) available from the Secretary of State’s website. Currently found at <http://www.sos.ri.gov/divisions/Notary-Public/notary-complaints>.

#### **2.2 Definitions**

- A. When used in these Rules, the following words, except as otherwise required by the context, shall have the following meaning described below. Additionally, all definitions set forth in the Standards are incorporated herein by reference to these Rules.
  - 1. “Contested Case(s)” means an adjudicatory proceeding before a Hearing Officer, as hereinafter defined, of the Department in which the legal rights, duties or privileges of a party are determined.
  - 2. “Complainant” means the person or persons submitting a complaint to the Department against a Notary Public.

3. “Complaint” means allegations against a notary public that he or she has violated the Standards. The Complaint shall state at a minimum:
  - a. Complainant Information (Name and contact information)
  - b. Respondent/Notary Public Information (Name and contact information)
  - c. Nature of Complaint/Allegation of violation – including the date of the alleged act, witnesses, and any facts deemed relevant to the allegation.
4. “Department Counsel” means the legal representative of the Department.
5. “Director” means the Director of the Department.
6. “Division” means a Division of the Department with the authority to perform statutorily designated Department functions.
7. “Hearing Officer” means the individual(s) authorized by law or duly designated by the Director to hear, conduct, and recommend decisions to the Director in Contested Cases.
8. “Notary” or “Notary Public” shall mean any person commissioned to perform official acts pursuant to R.I. Gen. Laws Chapter 42-30, as amended from time to time.
9. “Party” or “Parties” means each person named or admitted as a Party, or properly seeking and entitled as of right to be admitted as a Party in a Contested Case.
10. “Reasonable Cause” means an apparent state of facts of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs which if found to exist upon reasonable inquiry would induce a reasonably intelligent and prudent person to believe that a cause of action existed.
11. “Respondent” means a Party who is the subject of a complaint and/or Department investigation pursuant to § 2.3 of this Part.

## **2.3 Complaints and Department Investigation**

- A. Complaints. A Complaint, as defined above, may be made by any identifiable person against a Notary Public. Such Complaint shall be in writing and should preferably be on a form provided by the Secretary of State’s website (currently available at <http://www.sos.ri.gov/divisions/Notary-Public/notary-complaints>). The Department shall make an initial determination whether the Complaint is within the Department’s jurisdiction and whether the complaint states sufficient facts to establish Reasonable Cause, if assumed to be true, to proceed with an

investigation. If the Complainant does not have firsthand knowledge of the facts stated in the Complaint, the Department may further inquire as it deems appropriate.

- B. If no jurisdiction exists or the complaint does not state sufficient facts establishing Reasonable Cause to proceed with an investigation, the Department shall notify the Complainant in writing of its determination.
- C. If jurisdiction exists and the Complaint states sufficient facts establishing Reasonable Cause, the Department shall make whatever investigation it deems necessary, including serving a copy of the Complaint to the Respondent. Service of the Complaint to the respondent may be sent through regular or certified mail, postage pre-paid, to the Respondent's home address or place of business or through hand delivery. If instructed to do so by the Department, the Respondent shall be requested to file a response to the Complaint within the time frame specified by the Department, which shall not be less than twenty (20) days from mailing.
- D. Upon completion of its investigation, the Department may take one of the following actions:
  - 1. if the Department determines that the Complaint fails to establish Reasonable Cause for a finding of a violation of the Standards, the Department shall take no action on the Complaint, so advising the Complainant and Respondent in writing; or,
  - 2. if the Department determines that the Complaint establishes Reasonable Cause, the Department shall take such action as it deems appropriate under applicable law and the rules and regulations adopted pursuant thereto, including the removal or suspension of the Notary Public in accordance with R.I. Gen. Laws § 42-30-10. The Department will provide the following notice to the Respondent via regular and certified mail, postage pre-paid, a notice of determination which shall provide:
    - a. a statement of legal authority and jurisdiction to proceed;
    - b. a statement of the allegations and findings, including a copy of the Complaint;
    - c. reference to particular statutes, rules or Standards that appear to have been violated;
    - d. a statement of the sanctions to be imposed; and,
    - e. an opportunity to request a hearing within twenty (20) days of the mailing of the determination notice.

## **2.4 Opportunity to be Heard/Conduct of Hearings**

- A. If the Notary Public does not request a hearing within twenty (20) days of the mailing of the notice of determination, any and all sanctions shall be imposed and become effective on the twenty-first (21) day after the mailing and the right to a hearing shall be considered waived.
- B. If the Notary Public requests a hearing within twenty (20) days, the request shall establish a Contested Case, which shall then be conducted in accordance with the Department's Rules of Procedure for Administrative Hearings ("Administrative Rules"), Subchapter 10 Part 2 of this Chapter.
- C. After a fair hearing and consideration, the hearing officer shall issue a written decision to the Director for her/his consideration and adoption thereof. The Director shall issue her/his final written order which shall be sent by regular or certified mail, postage pre-paid, to the Respondent, with a copy to the Complainant.

## **2.5 Judicial Review**

Any Party aggrieved by a final written order of the Director may file a complaint with the Superior Court pursuant to R.I. Gen. Laws § 42-35-15. In the absence of a timely appeal, the order or decision of the Director shall become final from which no further administrative appeal may be taken; and, a copy of the final order shall be provided to the Office of the Secretary of State for such as action as is consistent with the final order.

## **2.6 Severability**

If any section, term, or provision of this Regulation should be adjudged invalid for any reason, that judgment should not effect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

## **2.7 Effective Date**

This Regulation shall be effective upon adoption pursuant to the Rhode Island Administrative Procedures Act.