



# State of New Mexico

Susana Martinez  
*Governor*

## EXECUTIVE ORDER 2011-036

### CREATION OF A STATE NOTARY COMPLIANCE AND ENFORCEMENT UNIT UNDER THE AUTHORITY OF THE OFFICE OF THE GOVERNOR AND SUPERINTENDENT OF THE REGULATION AND LICENSING DEPARTMENT

**WHEREAS**, New Mexico statutes grant the Governor authority to revoke the commission of any notary public who: (1) submits an application for appointment as a notary public that contains a false statement; (2) is or has pleaded guilty or nolo contendere to a felony or been convicted of a felony or of a misdemeanor arising out of a notarial act performed by him or her; (3) engages in the unauthorized practice of law; (4) ceases to be a New Mexico resident; or (5) commits malfeasance in office. NMSA 1978, §14-12A-26.

**WHEREAS**, the Governor has the authority to revoke the commission of any notary public who commits "Official Misconduct," which is defined by the New Mexico Notary Public Handbook as "(1) a notary public's performance of an act prohibited, or failure to perform an act mandated, by this act or by any other law in connection with a notarial act by the notary public; or (2) a notary public's performance of an official act in a manner found by the governor to be negligent or against the public interest."

**WHEREAS**, because notaries are public officers appointed and commissioned by the Governor, the Governor is charged with ensuring that notaries public are held to the highest standard of their commission.

**WHEREAS**, there exists a present need for the establishment of the Governor's Notary Compliance and Enforcement Unit under the control of the Office of the Governor that will investigate complaints of misconduct against notaries public and take disciplinary action when appropriate.

**WHEREAS**, there is an existing need for two separate and aligned notary departments: the Secretary of State and the newly created Notary Compliance and Enforcement Unit, within a current division of Regulation and Licensing Department (RLD).

Whereas, the Secretary of State's ministerial duties include reviewing the applications related to the applicants' eligibility for appointment as a notary, keeping records of the individual notary, and advising notaries of their expectations and duties.

**WHEREAS**, the Notary Compliance and Enforcement Unit, under the authority of the Superintendent at RLD, will use resources and infrastructure that are already in place. The trained law enforcement officers will investigate complaints received from the Secretary of State and recommend disciplinary action. The legal division within RLD will assess the nature of the violation, recommend disciplinary action, and pursue revocation of the notary commission in an administrative proceeding when appropriate.

**THEREFORE**, I, Susana Martinez, Governor of the State of New Mexico, by the authority vested in me by the Constitution of the State of New Mexico and by its statutes, do hereby **ORDER** and **DIRECT**:

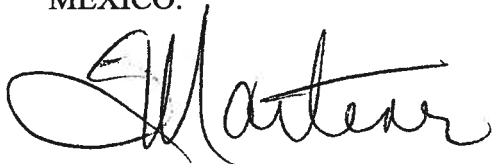
1. All complaints against notaries public shall be sent to the Secretary of State. The Secretary of State will forward these complaints, along with the notary's application(s) to the Notary Compliance investigations unit at the Regulation and Licensing Department. The Secretary of State shall also forward copies of the complaints to the Legal Department in the Office of the Governor.
2. The RLD investigations division shall conduct a thorough review of the allegations made against the notary and based upon the information obtained from the investigation, the investigator shall finalize a formal law enforcement report.
3. The investigator's report will go to the individual notary, the Legal Department in the Office of the Governor, and the Secretary of State's Office.
4. The prosecuting attorney within RLD will assess the report and recommend disciplinary action, when appropriate.
5. The disciplinary action may take three (3) different forms: a written reprimand, a formal warning or a notice of contemplated action. A copy of the action will become a part of the notary's file housed at the Secretary of State's Office.
6. The disciplinary action is self-enhancing and inclusive. Whether the complaints are related or unrelated, a notary will only receive one (1) written reprimand, the next violation automatically warrants a formal warning. Any subsequent violation warrants a notice of contemplated action and associated revocation proceedings.
7. The Notary Compliance and Enforcement Unit will only issue a single warning against a notary. Whether the complaints are related or unrelated, after a formal warning RLD shall proceed with a notice of contemplated action and initiate revocation proceedings for any subsequent violation.
8. The notice of contemplated action gives formal notice that the Governor, through RLD, is pursuing revocation proceedings.

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9. The notice of contemplated action, shall allow the notary to voluntarily resign his/her commission and detail the process and rights afforded in an administrative hearing.
10. Failure to respond within the time provided in the notice of contemplated action amounts to a waiver of the notary's right to a contested hearing and the Governor will revoke the notary's commission.
11. If a notary exercises his/her right to a hearing, the administrative proceeding shall take place in the normal course established by RLD.
12. If, after a hearing, the hearing officer finds that the notary committed misconduct, the opinion will be forwarded to the Governor advising revocation of the notary's commission.
13. Any complaint with an accompanying criminal investigation will automatically result in a notice of contemplated action and the notary will face full revocation proceedings separate and distinct from any criminal proceedings.
14. Executive Order 2004-02 is rescinded.

SIGNED AT THE EXECUTIVE OFFICE  
THIS 2<sup>nd</sup> DAY OF JUNE 2011.

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW  
MEXICO.



SUSANA MARTINEZ  
GOVERNOR

ATTEST



DIANNA J. DURAN  
SECRETARY OF STATE



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