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DEPARTMENT OF JUSTICE

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Ms. Susan Churchill
Deputy Secretary
Office of the Secretary of State
30 West Mifflin Street, 10th Floor
Madison, WI 53703

Dear Ms. Churchill:

¶ 1. You have requested my opinion on three questions related to section 137.01(2) of the Wisconsin Statutes,[1] concerning notary public commissions issued to attorneys licensed to practice law in Wisconsin.

¶ 2. In general, any United States resident licensed to practice law in Wisconsin may obtain a permanent commission as a notary public pursuant to section 137.01(2)(a). If an attorney has had his or her license to practice law in Wisconsin suspended or revoked, however, upon reinstatement of his or her license the attorney may obtain a 4-year commission as a notary public and may be reappointed thereafter for 4-year increments. Sec. 137.01(2)(am), Wis. Stats.

¶ 3. As you note, section 137.01(2)(c) provides that "[t]he 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[]" and that such notice is deemed to constitute revocation of the attorney's notary public commission. You indicate that the Office of Lawyer Regulation ("OLR"), acting as an agent of the supreme court, regularly sends your office notice of attorney licenses suspended or revoked for disciplinary reasons. You further indicate that these notices are checked against your office's database of permanent notaries public and that permanent notary commissions held by the disciplined attorneys are revoked.

¶ 4. You also indicate that you learned recently of other routine "law license suspensions" which previously have not been reported to your office:

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

[1]Unless otherwise indicated, all references in this opinion to provisions of the Wisconsin Statutes are to the 2007-08 edition.

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.

QUESTIONS PRESENTED AND BRIEF ANSWERS

¶ 5. As you review how this recent information about additional types of attorney license suspensions and revocations affects your office's administration of the section 137.01 notary public provisions, you have asked my opinion on three related legal questions. Those questions, and my brief answers, are as follows:

1. 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)?

   Brief Answer: The plain language of sections 137.01(2)(am) and (c) does not distinguish among the various types of attorney license suspensions and revocations. The phrase "suspended or revoked," as used in section 137.01(2)(am) therefore includes all suspensions and revocations of licenses to practice law in Wisconsin. Similarly, the phrase "suspension or revocation" in related section 137.01(2)(c) includes all suspensions and revocations of licenses to practice law in Wisconsin.

2. 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[s]?

   Brief Answer: Yes. An attorney applying for the first time for a notary public commission may be appointed to a 4-year commission if that attorney's license to practice law in Wisconsin has been reinstated after previous suspension or revocation of that license. An attorney who

previously held a permanent notary public commission that had been deemed revoked by notice filed with your office by the supreme court[2] that the attorney's license to practice law in Wisconsin had been suspended or revoked may be appointed to a 4-year notary public commission upon reinstatement of that attorney's Wisconsin law license. And, by operation of statute, the existing permanent notary public commission of an attorney is deemed revoked by notice filed with your office by the supreme court that the attorney's license to practice law in Wisconsin has been suspended or revoked.

3. If the answer to [1] 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?

   Brief Answer: An attorney's permanent notary public commission is revoked only upon filing of notice with your office by the supreme court pursuant to section 137.01(2)(c). Therefore, the date that notice is filed with your office by the supreme court pursuant to section 137.01(2)(c) that an attorney's Wisconsin law license has been suspended or revoked is the date that the attorney's permanent notary public commission is deemed revoked by operation of statute. If notice now is filed with your office that an attorney's Wisconsin law license had been suspended or revoked at some time in the past, that attorney's permanent notary commission is deemed revoked as of the date when the notice is filed with your office—not retroactively as of the date that the attorney's Wisconsin law license was suspended or revoked. Similarly, because section 137.01(2)(c) provides the only authorized mechanism for revoking permanent notary commissions, your office may not revoke permanent notary commissions upon receipt of information about law license suspensions and revocations received from sources other than notice filed by the supreme court.

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[2] I use the term "supreme court" in this opinion to refer to the Wisconsin Supreme Court and its designated agents.

ANALYSIS

¶ 6. All statutory interpretation begins with the language of the statute. *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. My analysis of your first question therefore begins with the language of section 137.01(2)(am), which applies to "a United States resident [who] has his or her license to practice law in this state suspended or revoked." Upon subsequent reinstatement of their Wisconsin law licenses, these attorneys may obtain renewable 4-year notary public commissions. Sec. 137.01(2)(am), Wis. Stats.[3]

¶ 7. The Legislature is presumed to deliberately choose the language it uses in a statute, *State v. Briggs*, 214 Wis. 2d 281, 288, 571 N.W.2d 881 (Ct. App. 1997), and to choose statutory language carefully and precisely to convey its intended meaning. *State v. Smits*, 2001 WI App 45, ¶ 15, 241 Wis. 2d 374, 626 N.W.2d 42. Statutory language must be given its common, ordinary, and accepted meaning; technical or specially-defined words are given their technical or specially defined meanings. Sec. 990.01(1), Wis. Stats.; *Kalal*, 271 Wis. 2d 633, ¶ 45. Common and accepted meaning of statutory terms may be ascertained by reference to dictionary definitions. *Kalal*, 271 Wis. 2d 633, ¶¶ 53-54.

¶ 8. In my opinion, the language of section 137.01(2)(am) is not ambiguous. Statutory language is ambiguous if it can be understood by reasonably well-informed persons in two or more senses. *Kalal*, 271 Wis. 2d 633, ¶ 47. Or, in other words, that there exist "different but plausible interpretations of the statute." *Kroeplin v. Wisconsin Dep't of Natural Res.*, 2006 WI App 227, ¶ 19, 297 Wis. 2d 254, 725 N.W.2d 286. There is only one plausible interpretation of the relevant section 137.01(2)(am) language, however.

¶ 9. The 4-year notary public provisions of section 137.01(2)(am) apply to "a United States resident [who] has his or her license to practice law in this state suspended or revoked." Both "suspend" and "revoke" have easily ascertained plain meanings. "Suspend" means "to debar or cause to withdraw temporarily from any privilege, office, or function;" "to cause (as an action, process, practice, use) to cease for a time;" or "to hold in an undetermined or undecided state awaiting fuller information." *Webster's Third New International Dictionary* 2303 (1986) ("*Webster's*"). "Revoke" means "to bring or call back," "to annul by recalling or taking back (as something granted by a special act)," or "WITHDRAW." *Webster's* at 1944.

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[3]Section 137.01(2)(am) provides:

> If a United States resident has 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. At least 30 days before the expiration of a commission under this paragraph the secretary of state shall mail notice of the expiration date to the holder of the commission.

¶ 10. The common and accepted meanings of "suspend" and "revoke," ascertained by reference to their respective dictionary definitions, do not in themselves create distinctions between different types of license suspensions or different types of license revocations. Nor do any such categorical distinctions appear in the actual language of section 137.01(2)(am).

¶ 11. Consideration of section 137.01(2)(c) reinforces my conclusion that the section 137.01(2)(am) "suspended or revoked" language unambiguously refers to any suspension or revocation of an attorney's license to practice law in Wisconsin. Statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results. *Kalal*, 271 Wis. 2d 633, ¶ 46. When the same word is used in neighboring subsections, it generally should be given same meaning in each subsection. *State v. White*, 2004 WI App 237, ¶ 10, 277 Wis. 2d 580, 690 N.W.2d 880.

¶ 12. Section 137.01(2)(c) provides for the supreme court to file with your office "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." The section then provides that such notice is deemed a revocation of the attorney's notary public commission.[4] Like section 137.01(2)(am), the language of section 137.01(2)(c) does not explicitly or implicitly distinguish between types of suspensions or revocations.

¶ 13. Procedurally, sections 137.01(2)(c) and (am) are intimately connected. Section 137.01(2)(c) provides the process for revoking the permanent notary public commission of an attorney whose Wisconsin law license has been suspended or revoked. Section 137.01(2)(am) provides the process by which an attorney whose Wisconsin law license has been suspended or revoked may, upon reinstatement of his or her law license, obtain a 4-year notary public commission. Absence from either of these closely related statutes of any distinction among different reasons for suspension of revocation of an attorney's Wisconsin law license therefore reinforces my conclusion that the provisions of both statutes apply to all law license suspensions and revocations.

¶ 14. In Wisconsin, lawyer regulation is the purview of the Wisconsin Supreme Court. SCR 10.01(1) and (2). Examination of relevant supreme court rules further reinforces my conclusion that the section 137.01(2)(am) "suspended or revoked" language, and its section 137.01(2)(c) counterpart, unambiguously refer to any suspension or revocation of an attorney's license to practice law in Wisconsin.

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[4]Section 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.

¶ 15. The supreme court may revoke or suspend the license of an attorney as discipline for professional misconduct. SCR 21.16(1m)(a) and (b). Attorneys who do not pay their state bar dues or fail to file a trust account certificate are subject to suspension of their state bar membership, following notice and a grace period. SCR 10.03(6m) and SCR 10, Appendix, sec. 3(a). Similarly, the state bar membership of an attorney who fails to comply with CLE attendance and reporting requirements is subject to suspension and "shall not engage in the practice of law in Wisconsin while his or her state bar membership is suspended under this rule." SCR 31.10(1).

¶ 16. Suspension of state bar membership constitutes suspension of an attorney's license to practice law in Wisconsin. The same supreme court rule, "License reinstatement," addresses reinstatement of those attorneys "suspended from the practice of law for nonpayment of state bar membership dues or failure to comply with the trust account certification requirement or continuing legal education requirements," SCR 22.28(1), and attorneys whose licenses have been revoked or suspended for misconduct, SCR 22.28(2) and (3). *See also* SCR 31.11.

¶ 17. The court's published decisions in attorney discipline cases confirm that suspension from the state bar constitutes suspension of an attorney's license to practice law in Wisconsin. *See, e.g.*, *In the Matter of Disciplinary Proceedings Against Michael F. Swensen*, 2008 WI 113, ¶ 3, 314 Wis. 2d 29, 754 N.W.2d 499 ("Attorney Swensen's Wisconsin law license is currently under suspension for failure to comply with mandatory continuing legal education requirements and failure to pay State Bar of Wisconsin dues"); *In the Matter of Disciplinary Proceedings Against James R. Lucius*, 2008 WI 12, ¶ 3, 307 Wis. 2d 255, 744 N.W.2d 605 ("Attorney Lucius's license to practice law in Wisconsin was suspended for his failure to comply with continuing legal education (CLE) reporting requirements").

> In Wisconsin, membership in the class of "active members" of the State Bar of Wisconsin is a condition precedent to the practice of law. SCR 10.01; SCR 10.03(4). Moreover, the payment of annual bar dues and assessments is a requirement of membership in the state bar. The failure to pay annual bar dues and assessments may result in the suspension of the attorney's license to practice law in this state.

In the Matter of Disciplinary Proceedings Against Edward James FitzGerald, 2007 WI 111, ¶ 5, 304 Wis. 2d 592, 735 N.W.2d 913 (footnotes omitted).

¶ 18. Suspension of an attorney's state bar membership therefore constitutes suspension of the attorney's license to practice law.

¶ 19. For all these reasons, therefore, it is my opinion that attorney suspensions for failure to pay state bar dues, file trust account reports, or comply with CLE requirements constitute suspension of the attorney's license for purposes of the notary public provisions of

section 137.01(2). As discussed below, your further questions involve practical application of these statutory provisions.

¶ 20. Your second question is whether the same definitions of "suspended or revoked" law licenses apply both to attorneys applying for Wisconsin notary public commissions for the first time, and to attorneys who have existing permanent Wisconsin notary public commissions. In my opinion, the same definitions apply to both groups of attorneys whose Wisconsin law licenses have been suspended or revoked.

¶ 21. On its face, the plain language of section 137.01(2)(am) does not distinguish between attorneys applying for their first Wisconsin notary public commissions and attorneys who previously held permanent notary public commissions.

¶ 22. Moreover, interrelationship of the language of section 137.01(2)(am) language with the language of section 137.01(2)(a) confirms that the section 137.01(2)(am) provisions apply to all attorneys.

¶ 23. Section 137.01(2)(a) establishes the general rule: "any" United States resident licensed to practice law in Wisconsin is entitled to a permanent commission as a notary public upon satisfaction of the specified conditions. The meaning of "any" is unambiguously all-inclusive. "'Any' means *any* . . . ." *State ex rel. Hipp v. Murray*, 2007 WI App 202, ¶ 12, 305 Wis. 2d 148, 738 N.W.2d 570.

¶ 24. Section 137.01(2)(a) also establishes by reference that there is one exception to the general rule of entitlement; it begins, "[e]xcept as provided in par. (am) . . . ." Two criteria define the section 137.01(2)(am) exception: an attorney subject to that provision has had his or her Wisconsin law license suspended or revoked, and the attorney subsequently obtained reinstatement of his or her Wisconsin law license. The criteria are stated in terms of the loss and reacquisition of the Wisconsin law license, not in terms of an initial notary public application or a subsequent reapplication.

¶ 25. In my opinion, therefore, section 137.01(2)(am) by its plain language applies both to attorneys applying for their first Wisconsin notary public commission and attorneys applying for a 4-year notary public commission after revocation of their previously obtained permanent commissions.

¶ 26. Likewise, the language of section 137.01(2)(c) is plain and unambiguous. Besides applying to "any" described attorney, like the section 137.01(2)(am) provision discussed above, section 137.01(2)(c) also includes the directive "shall" in two places: the supreme court "shall" file notice of the "suspension or revocation of the license to practice law of any attorney" who holds a permanent notary public commission and such notice "shall be deemed a revocation" of that commission. The word "shall" generally is presumed to be mandatory when interpreting

statutory language. *State ex rel. Marberry v. Macht*, 2003 WI 79, ¶ 16, 262 Wis. 2d 720, 665 N.W.2d 155. Nothing in the statutory language itself above supports any other interpretation. Conversely, any other interpretation would defeat the Legislature's regulatory objectives and create inequitable consequences if not uniformly applied to all attorneys whose law licenses have been suspended or revoked. *Cf. Marberry*, 262 Wis. 2d 270, ¶ 17.

¶ 27. In my opinion, therefore, section 137.01(2)(c) by its plain language mandates that filing by the supreme court of notice about any suspension or revocation of an attorney's Wisconsin law is deemed a revocation of that attorney's existing permanent notary public commission.

¶ 28. Your third question concerns the effective date for revocation of permanent notary public commissions by operation of section 137.01(2)(c). By operation of statute, revocation of a permanent notary commission is not automatic or discretionary. Instead, revocation of an attorney's permanent notary commission only occurs if and when the supreme court files notice with your office that the attorney's Wisconsin law license has been suspended or revoked.

¶ 29. Section 137.01(2)(c) constitutes the exclusive mechanism for revocation of an attorney's existing permanent notary public commission. The language of section 137.01(2)(c) is unambiguous: "Such notice shall be deemed a revocation of said commission." In my opinion, therefore, the operative date for your office's administration of section 137.01(2)(c) is the date that the supreme court files with your office the notice of the suspension or revocation of an attorney's Wisconsin law license—not the actual date that the attorney's law license was suspended or revoked.

¶ 30. By itself, suspension or revocation of an attorney's Wisconsin law license does not automatically revoke that attorney's permanent notary public commission. Your office therefore has no independent obligation or authority to seek out lists of suspended or revoked attorneys, verify the law licensing of attorneys holding permanent notary commissions, or otherwise revoke permanent notary public commissions. Instead, your office must act only upon filing of notice by the supreme court pursuant to section 137.01(2)(c).

¶ 31. Conversely, your office may not unilaterally revoke a permanent notary public commission without filing of notice by the supreme court pursuant to section 137.01(2)(c). There is no statutory authority for the Secretary of State to revoke a permanent notary commission without filing of such notice. Section 137.01(2)(c), as noted above, provides the exclusive mechanism for revoking an attorney's permanent notary public commission.

¶ 32. To summarize, sections 137.01(2)(am) and (c) operate as follows. An attorney applying for the first time for a notary public commission, whose Wisconsin law license previously was suspended or revoked but has been reinstated, is entitled to a 4-year notary public appointment which may be renewed for subsequent 4-year terms. An attorney's existing

permanent notary public commission is deemed revoked by operation of statute only upon filing of notice by the supreme court with your office that the attorney's Wisconsin law license has been suspended or revoked for any reason. Finally, an attorney who previously held a permanent notary public commission, which was deemed revoked by notice filed with your office by the supreme court that the attorney's Wisconsin law license had been suspended or revoked, is entitled upon reinstatement of his or her law license to a 4-year notary public appointment which may be renewed for subsequent 4-year terms.

¶ 33. I hope that you find this analysis helpful in your office's administration of the notary public statutes.

Sincerely,

J.B. Van Hollen
Attorney General

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