

**Below are comments made with regard to the March 23, 2010 RULONA draft, either before or after the conference call on that date. I did not include, however, those comments that related to reporter's Comments inasmuch as those Comments will be revised after the draft is completed. Also please note that two sets of comments were submitted as PDF documents, which I was not able to copy into this Word document directly. Therefore, I inserted the actual PDF documents in this documents. Hopefully, they will open for you properly.**

- **Comments by Mark Ladd**

Revised Uniform Law on Notarial Acts - March 23, 2010 Discussion Draft – Comments from ALTA

Drafted by Gene Aalseth at First American Title Insurance Company

1. Section 6(b)(3) gives too much discretion to the notary public to rely on another form of credential with no guidance on what that credential must contain. If the definition of identification credential was still in section 2, then adding the word "identification" before the word "credential" and the words "as that term is defined in Section 2(4)" after the word "credential" would probably correct this concern since the definition of identification credential provided guidance on what the credential must contain.
2. Line 22 on page 14, should another bracket be added to read [a(1), (2), (3) or (4)]?
3. Line 1 on page 16 – Alternative A seems to be the best alternative from the standpoint of the notarial officer because the notarial officer will not have to research the law of the state in which they are taking performing the notarial act. However the laws of the state in which the notarial act is performed may prohibit the act. For instance, this act provides that a notarial act may be performed in this state by the following individuals: (1) a notary public of this state, etc.
4. Line 5 on page 16 – Alternative B seems to be a better legal solution provided an additional provision is added to the Act that would allow an out of state notarial officer to perform a notarial act in this state provided it is in regard to a record that is part of a transaction [subject to][governed by] the laws of the state in which the notarial officer is commissioned, licensed or otherwise authorized to perform notarial acts.
5. Line 7 on page 16 – Change "Law of Notarial Acts" to "Law on Notarial Acts"
6. Line 35 on page 24 – suggest rewording Section 14(b) to emphasize the importance of securing the stamping device. Suggested language to replace first sentence: "A notary public is responsible for maintaining the notary public's stamping device in a secure place at all times to prevent its use by any individual other than the notary public. The notary public shall not allow another individual to possess or use the device."
7. Beginning in the middle of line 37 on page 24 – the portion of Section 14(b) that deals with the disabling of the stamping device by destroying, defacing, damaging, or erasing it in a manner that renders it unusable in certain circumstances, including the resignation from or revocation of the notary public's commission seems to give too much discretion to the notary public. For instance, what's to prevent a notary public whose commission has been revoked from continuing to use the stamping device? It would be more appropriate to require the stamping device to be returned to the commissioning officer or agency for disabling or destruction.

8. Line 22 on page 26 – Why are individuals licensed to practice law in the state excused from the requirement to maintain a journal. This law gives them the right to perform notarial acts, can't it also require them to maintain a journal of those acts?
9. Line 32 on page 26 – Suggest adding a provision that the entries must appear in sequential order with no gaps to prevent backdating of documents.
10. Line 12 on page 27 through line 17 – Query: Is it better to have the journal maintained by the notary public or by the commissioning officer or agency upon resignation, revocation or suspension? A change to these sections would also require a change to the last sentence of subsection (a). For example, “Except in the event of resignation from, or the revocation or suspension of, the notary public’s commission , the notary public shall retain the journal for 10 years . . .”
11. Line 23 on page 27 – Delete “]” at end of the sentence.
12. Line 18 on page 33 – If optional section 19 is not used, need to consider renumbering of Sections 20 and following, unless Section 19 is reserved or handled in some other way.
13. Line 25 on page 38 – Suggest that the words “assist individuals” be followed by “or other persons” to make it clear that no legal advice whatsoever can be given.
14. Line 1 on page 39 – Same suggestion as number 46 [13] above.

- **Comments by Dave Biklen**

Suggested edits for March 17 Notary draft – most of these are style and need not be mentioned at March 23 phone meeting

- p. 5 line 3 and 5. Do we need “or seal”? Does not appear to be used in act.
- p. 10 line 41, insert comma after record.
- p. 11 line 3. Can we delete “previous”?
- p. 11 line 11. Change “no’ to “not”.
- p. 16 line 2 and 6. Delete “that is”.
- p. 24. line 30. Insert as second sentence something like, “When performing a notarial act, a notary public must use the official stamp.”
- Line 30. Change “An” to “The”.
- Line 35. Insert before first sentence something like? “The notary public must use a stamping device to apply an official stamp.”
- p. 25. line 11. Delete “deemed”.
- p. 26. line 22. If an attorney is not a notary public, but a notarial officer, perhaps we do not need “other than an individual licensed to practice law....”
- p. 29. line 24. Delete “Prior to” and insert “Before”.
- Line 28. I do not understand this provision. Perhaps the subject should be “The [commissioning officer or agency]”
- p. 33, line 18. Delete “be” and insert “have been”?

- p. 34 line 7. What effect on validity of notarial acts performed after expiration of a valid assurance?
- p. 35. line 27. Place a period after “state”. Begin new sentence “The course shall cover....”
- p. 37. line 12. Subsection (c) should perhaps be a new section 21 and renumber remaining sections. Sub (c) is a different subject than the material in sec. 20 which is about basis to grant or deny a license.
- p. 39. line 2, insert comma after “advice”.

- **Comments by Pennsylvania Association of Notaries (Marc Aronson) (click on PDF to open)**



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- **Comments by Bill Anderson**

1. Do we need a definition of “electronic signature” in the act? The only time the term is used in the draft aside from the comments that I could find is in Section 22 (a)(3) and in Section 26 in referring to E-Sign . I think the new definition of “signature” covers it.
2. In Section 6 (b)(2), a credible witness may be identified with a passport or driver’s license. However, in 6 (b)(3), a Notary can base identification of an individual on another form of credential. If we are going to keep 6 (b)(3) in the act, I think it should also extend to 6 (b)(2). In other words, a credible witness should be able to present any form of identification credential permitted under the act.
3. I agree with the policy undergirding Section 7 (a)(1) and (2), however, from a style perspective both provisions should be written the same way. Section 7 (a)(1) is drafted negatively – “is not satisfied ...” while 7 (a)(2) is stated differently – “is concerned ...”
4. The title of Section 10 would better read “NOTARIAL ACTS IN ANOTHER STATE” to make it parallel with the title of Section 9.
5. In the bracketed journal section (Section 15), the act states that a journal kept in electronic format must be kept in a format complying with rules of the commissioning officer or agency (7 (b)). The committee should consider adding a bracketed provision to Section 22 (a) authorizing the commissioning official to create rules for the format of electronic journals under Section 15.
6. In Section 17, the term “record” should be used instead of “instrument” in 17 (1) and (2) – “This record was acknowledged before me on ...” and “document” in 17 (5) – “For certifying a copy of a record” and “I certify that this is a true and correct copy of a record in the possession of ...”. In the case of the latter, this is especially important if the policy of the act is to allow electronic copy certifications. Using “record” in Section 17 would also parallel the use of “record” throughout the act, and especially in Sections 2 and 4 (see especially Section 2 (1) and Section 4 (a) (d)).
7. Since most states organize their Notary laws with the qualifications and other commissioning requirements at the head of the chapter, the committee should consider renumbering Sections 18 and 19 as Sections 2 and 3.

8. The committee should consider placing Section 21 before Section 20 because Section 20 alludes to Section 21 (20 (a)(6)).

- **Comments by Tim Reiniger**

- 1) Page 4, line 11 - for consistency with later references, Articles 5 and 7 of the Apostille Convention, and US state and federal rules of evidence, insert "or seal" after "official stamp."
- 2) Page 22, lines 12 through 14 - delete starting with "If the notarial act...." Like the paper act, the electronic notarial act requires proof of authority.
- 3) Page 24, lines 28 and 30 - insert "or seal" after "official stamp" for the same reasons as point 1 above.
- 4) Page 30, line 25 - insert "or seal" after " stamp" for the same reasons as point 1 above.
- 5) Page 31, lines 8 and 21 - insert "or seal" after "stamp" for the same reasons as point 1 above.
- 6) Page 32, line 6 and 18 - insert "or seal" after "stamp" for the same reasons as point 1 above.

- **Additional Comments by Tim Reiniger**

1) To best position the final product with respect to federal and state rules of evidence as well as existing notary law in non-ULONA states, I would recommend that the following language be inserted in Section 14 as a new paragraph (e):

The official notarial stamp required by this section, whether applied to the record physically or electronically, is deemed to be a "seal" for purposes of the admission of a document in court.

[Source: Minnesota bill S.F. No. 214, amendment to Code Section 359.03, subdivision 2.]

I would also recommend that this point be referenced in the Commentary to Section 2 (9), "Official Stamp."

2) In Section 12, for consistency with the Apostille Certificate and Articles 5 and 7 of the Apostille Convention (and to avoid confusion in the overseas acceptance of US notarial acts), I would recommend the following edits be made to the domestic forms in Section 17: Insert Seal/stamp in place of "Stamp" on page 30 (line 25), page 31 (lines 8 and 21), and page 32 (lines 6 and 18).

- **Comments by Notary Public Administrators (click on PDF to open)**



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- **Comments by John Sebert**

10(b) – If I am not mistaken, I think this was put in at the December meeting in partial response to a much broader request from the ABA International Law Section. Given the fact that only a few states

have similar provisions, the idea of either deleting it entirely or bracketing it and putting it at the end of the section may be increasingly attractive. I don't think we have any obligation to the Section to keep this in.

15(c)(5), line 8: "including the date of issuance and expiration of any identification credential"

I am not sure why 15 is bracketed, but I assume there is good reason and do not want to raise an issue carefully decided.

18(d): Is it worthwhile bracketing the alternatives in the first line, thus forcing a decision; or should the committee just make a decision on this point?

21(d): "... may not deny an individual access to ... provided by that individual when seeking performance of a notarial act ..."

22(b) (1): deleting "standard-setting" seems right. But hold the line on not incorporating any specific NASS standards.

- **Comments by Peter Hamasaki**

My two cents while the thought is fresh in my mind: with respect to extra-territorial notarial acts under Section 10 of the draft, while I voiced support for Alternative A during the call, if the intent is not to make a general change in the law, but rather to accommodate the current practice in specific states, then I'm generally in agreement with Brian Flowers that Alternative B (perhaps even further narrowed to refer specifically to Section 10(b)), possibly with brackets and a comment with respect to the committee's intent, seems preferable.

- **Comments from the American Society of Notaries**

Section 3, Authority to Perform Notarial Acts Regarding Item (b), I prefer that the notarial officer be prohibited from performing a notarial act for his/her spouse or any family member, but the current language works.

Section 6, Identification of Individual I am concerned that the present language of Item (b)(3), another form of credential that provides identification of the individual and that is satisfactory to the officer," is not specific enough guidance for notaries and provides them too much leeway in determining satisfactory identification. I believe the NPA Section also raised this concern. I would be more comfortable with this item reading something like, "a government-issued credential, displaying a photograph and signature, that is satisfactory to the officer."

Section 10, Notarial Act in Another State I prefer Alternative A to Alternative B.

Section 15, Journal, I wish this were not bracketed language, but the committee debated this thoroughly and there is no need to revisit.

Section 16, Notification Regarding Performance of Notarial Acts on Electronic Records; Selection of Technologies. I feel this language, coupled with the new wording of Section 22, Rules, clearly

recognizes the input the Committee received in the February 23<sup>rd</sup> conference call, and capably addresses the concerns expressed by Notary Public Administrators therein. That said, I understand and support their desire for RULONA to at least detail the particulars of the notification requirement and to include the performance standards adopted by the National E-Notarization Commission of NASS. These points were made in the NPA Section letter distributed on March 23<sup>rd</sup>. ASN believes that e-notarization implementation based on statute alone (“how to do it” absent the procedural detail typically provided by rule) would benefit from the basic structure that could be provided if RULONA includes the NASS Standards’ provisions on notification and performance standards.

Section 17, Short Form. I agree with others’ suggestions that the notarial certificate forms in this section be amended to substitute the term “record” for current terms “instrument “ and “document,” and to replace the term “Stamp” with “Seal/stamp.”

Section 19, Education of Notaries Public I prefer that this section be un-bracketed.