

MEMORANDUM

To: Notarial Acts Committee, Advisors and Observers
From: Pat Fry and Art Gaudio
Date: October 13, 2008
Re: Summary – First Meeting – ULONA Committee

The Drafting Committee to revise the Uniform Law on Notarial Acts met October 3 – 4, 2008, in Chicago. Those attending included Committee Members Pat Fry (Chair), David Biklen, Peter Hamasaki, Larry Klemin, Ed Lowry, Ray Pepe, Anita Ramasastry, and Candace Zierdt; Reporter Art Gaudio; ABA Advisor Jim Wine and ABA Science and Technology Section Advisor David Ewan; and Observers Bill Anderson, L.H. Wilson, Terry Walsh, Mike Smith, Betsy Bogart, Jean Branscom, Mark Ladd, Malcolm Morris, Ray Janicko, Marc Aronson, Tom Smedinghoff, Carmelo Bramante, Ann Wall and John Jones. ULC President Martha Walters, Executive Committee Chair Robert Stein, and Executive Director John Sebert participated in portions of the meeting.

Below is a summary of its preliminary conclusions:

- In Section 1, the definition of Identification Document was revised to mean a U.S. passport, a state issued driver's license or other similar credential recognized by a state.
- In Section 2, the provisions regarding notary education and bonding should be optional. It was decided to add an optional provision for continuing education of notaries.
- The Committee recognized that Section 2 on the Commission, Qualifications and Education of notaries public and Section 13 on Grounds for Refusal, Revocation or Suspension of a Commission are, at least in part, beyond the charge as given by the Scope Committee. However, the Drafting Committee believed that these provisions, with revisions, would be valuable for several reasons.

First of all, already within the charge to the Committee are the remedial provisions in these sections. In addition, the Committee believes it is important that the revised act take affirmative measures to improve the integrity and reliability of the notarial process. These sections would go a long way in that regard; they set up standards for the commissioning of persons as notaries public and for the suspension or revocation of the commission. Indeed, several observers noted that merely inserting the educational provision as an optional provision would likely be enough to move the adoption of that provision in a number of states.

Thus, there was a consensus on the Drafting Committee to submit to the Scope Committee and the Executive Committee a proposal to broaden the Committee's charge in this regard.

- In Section 3, the meaning of a notarial officer's personal knowledge of the signatory on a document was revised to provide that the notary's personal knowledge of a signatory must be sufficient to provide reasonable certainty that the individual has the identity claimed.
- Also regarding Section 3, many Observers pointed out the importance of credible witnesses as a basis for a notarial officer's satisfactory evidence of identifying the signatory. As a consequence, the meaning of satisfactory evidence of an individual's identity was expanded to include identification by oath or affirmation of a credible witness as to the signatory's identity, as long as the credible witness is personally known to the notarial officer or is identified to the notarial officer by means of an identification document.
- Section 4 on Advertising Disclaimer and Unauthorized Practice of Law was changed to remove subsection (b) regarding an exception to professionals who operate within their fields of expertise; the change to subsection (a) makes that provision unnecessary.

Subsection (a) was revised to provide that the notarial commission does not authorize the notarial officer to draft documents or give advice in the nature of legal advice (however, other licensing may allow drafting such documents or giving such advice). The provision on advertising (prior subsection (c), now (b)) was clarified and expanded to prohibit any false and deceptive advertising.

- The discussion of Section 9 on Certificate of Notarial Acts and Section 10 on Signature, Stamp and Seal led to general agreement that the act should not require both a stamp and a seal. It was recognized that they are duplicative. Tentatively, there will only be a single requirement; presumably that will be called a stamp. The definitions in the act should also include a definition of a "stamp."

There was further discussion of the contents of the stamp and its value as a uniform method of communicating that valuable content. It was recognized that the stamp has value because it can verify that the person using it has a notarial commission. However, it was also recognized that its use is an imperfect assurance because an unauthorized person may obtain one.

- The discussion of the Certificate led to a general review and extended discussion of the organization and structure of the act itself. It was recognized that in the act as drafted there is a bifurcation of the approaches and treatment of notarization in paper and electronic environments. If possible, the distinction should be eliminated. In accomplishing that objective, two approaches were discussed, possibly for presentation to the Conference and advice at the first reading:

- Because of the history of the notarial process as well as the fact that the Committee is drafting a revision of an existing act, it might be wise to present a version of the act that contains the general outline as it currently exists in the act, but to eliminate the distinctions and unnecessary burden wherever possible.
- As an alternative it was suggested that a totally revised draft be prepared that is a unified proposal – one that combines the provisions for electronic and paper notarization into a single proposal. Unless necessary because of genuine differences, the same provisions should apply in paper and electronic environments.
- The discussion of Section 14 on Electronic Notarization continued the discussion described in the above paragraph. There was a general discussion of the purpose of rules, regulations and standards in the electronic notarization process. There was a discussion of the identification objective in the notarization process, especially as applied to the electronic environment. These are (tentatively): (1) ascertaining if the person claiming to be a notarial officer is, in fact, a commissioned officer, (2) identifying a way to link the identified notarial officer to the particular transaction or document; and (3) providing a means for a relying party to validate the prior two matters. Any rules or regulations should be aimed at accomplishing these objectives.
- There was a review of the status of electronic notarization and the states currently allowing it. It was agreed that at our next meeting, whether the in-person meeting in the spring or a webinar prior to that meeting, we would try to have demonstrations of one or more of the electronic notarization processes.