



Comments on Pennsylvania Proposed Regulations Submitted by Bill Anderson, Vice President, Government Affairs October 24, 2018

General Comments

- 1. Many of our comments relate to the length of the proposed regulations themselves and not to a particular policy position proposed in the regulations. We are concerned that the regulations are so extensive and dense at points that Notaries will have difficulty reading them. To cite one example, our first specific comment proposes a revision, that if adopted, would pare the provision down from 72 words and 381 total characters to 55 words and 280 total characters. We respectfully urge the Department to consider redrafting lengthier provisions of the regulations to enhance readability.
2. We suggest replacing several instances of the term "document with the RULONA term "record." See 167.49(b)(1) and (b)(3)(i), 167.50(c) — three instances, 167.52 (caption), 167.63(d), 167.65(b), (e) and (h), 167.114(a)(5), and 167.116(b) — two instances. It also occurs in 167.116(a), but the context justifies the use of the term there.

Comments on Specific Sections

Section 167.13: We suggest the regulation be shortened to read, "A notary public who neither resides nor has a place of employment or practice in this Commonwealth will be deemed to have resigned the commission as a notary public and shall notify the Department in writing or electronically within 30 calendar days of the date that residency or employment or practice within this Commonwealth ceases."

Section 167.14

- We believe the policy behind subsection (d) is flawed. An illegible signature is a "signature." The term is defined under the RULONA as "a tangible symbol." Legibility of the signature is not a requirement. Furthermore, we suggest it is not necessary to require Notaries to write their name near the signature if it is illegible because presumably the application form itself will contain the name that is signed. We recommend striking the entire subsection.
If the Department, however, retains the policy of subsection (d), we believe the last sentence of subsection (d) is unnecessary. We recommend combining the first two sentences of subsection (d) so that the provision then would read, "The applicant must sign a legible handwritten signature on the application that matches the name in which the applicant applies and can be easily read by anyone examining or authenticating the signature. If an applicant's signature is not legible, the applicant shall legibly print his name near the signature."

Section 167.15

- We suggest shortening subsection (a) to read, "Under section 322(a) of the act (relating to examination, basic education and continuing education), an applicant for a commission as a notary public who does not hold a current commission includes an individual who never held a commission as a notary public and an individual who previously held a commission but whose commission has expired."
We suggest shortening subsection (b) by eliminating the first sentence entirely and expressing the policy behind it more simply by retaining the second sentence, adding the words "and proctored" after "administered," and ending the sentence after the second occurrence of "professional testing organization." Subsection (b) would then read, "The examination will be



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administered and proctored by a professional testing organization under contract with the Department at times, places and costs established by the professional testing organization.”

- If you believe the last clause of subsection (b) should be retained, we recommend that you make it into a new subsection. That provision could read, “An examination shall not be taken prior to submission of and approval by the Department of an application for appointment.”

Section 167.16: We suggest this section be left out of the regulation entirely and instead summarized on the Department’s website. Most people who want to know about the commissioning process wouldn’t necessarily go to the regulations to find it.

Section 162.22

- We suggest striking the words “or crimper” in subsection (a) and adding “seal” after “embosser.”
- We suggest rewording subsection (b) to read, “An official stamp must be capable of being copied, filmed, scanned or otherwise legibly reproduced.” We also suggest moving it to section 167.21 as new subsection (d) where it fits better and renumbering the remaining subsections of that section.
- In subsection (c):
 - (i) We believe the second sentence is unnecessary. We also believe the last sentence of subsection (c) can be removed without affecting the policy behind the entire subsection.
 - (ii) We also recommend an amendment to the third sentence in subsection (c) to make it active. The entire provision then would read, “The stamping device is the exclusive property of the notary public. When not in use, the notary public shall keep the stamping device in a secure location that is accessible only to the notary public.”
 - (iii) This provision is written to apply to tangible stamping devices, but does it address electronic stamping devices as well? You may want to consider clarifying in section 162.22(c) that for the purposes of that subsection, an electronic stamping device may be secured by a password or other secure means of authentication.
- We believe subsections (d)(5) and (e) are burdensome to the Notary. Unless the Notary’s new stamping device is noticeably different from the original stamp that was lost or stolen, we do not see how these provisions help achieve a policy that heightens the security and integrity of notarial acts. At worst, a Notary will have two identical devices if the original device is found.

Section 167.23

- In subsection (a), we suggest replacing “embossed or crimped image” with “embosser seal.”
- In subsection (b), we recommend replacing “the embossing or crimping” with “an embossment.”

Section 167.31: We recommend that the provision be clarified to allow a Notary to record commission ID numbers and expiration dates for multiple commissions. Out of cost considerations, we support allowing a Notary to use a journal that spans commissions, especially if the Notary performs notarizations infrequently.

Section 167.32: Similar to the foregoing, we are concerned that the transitional provision of subsection (g) requires a Notary to cease using the journal when the current commission ends. We support a policy that allows Notaries to continue to record notarizations in existing journals across commission terms.



Section 167.33(b): We suggest adding the words “smyth sewing or stitching” before “glue.”

Section 167.34(e)(2): We recommend striking the words, “and may invalidate the electronic notarial journal entry.” A tamper-evident technology doesn’t invalidate anything. Human actors (usually compliance personnel or attorneys) determine whether a change that is detectable by a tamper-evident technology is permissible or not, and consequently determine whether to trust, or not trust, the change.

Section 167.35

- We suggest conforming subsection (a) to the changes proposed in section 167.22(a) with respect to the stamping device so that the two sections run parallel.
- The provision would then read, “The journal is the exclusive property of the notary public. When not in use, the notary public shall keep the journal in a secure location that is accessible only to the notary public.”
- The caption for the section could remain unchanged.

Section 167.36: If the policy of allowing inspection of the journal in subsection (a) is broad and without qualification, we wonder why the policy surrounding certified copies of entries in subsection (b) is different. We believe both should be the same. With that said, we support a policy that requires any person requesting to inspect or obtain a photocopy of the journal to present a signed, written request to the Notary containing the names of the signers, type of document and month and year notarized and suggest that this policy be considered for both inspection and copying of the journal.

Section 167.41: A minor point, but this section sounds like a rule of construction that would be fit in Subchapter A.

Section 167.45

- We recommend rewording subsection (b) more simply as, “A notary public shall not notarize the notary public’s own signature.”
- We recommend striking the second sentence of subsection (b) because it doesn’t say anything that 57 Pa.C.S. Section 304(b)(1) doesn’t already say.

Section 167.46: We suggest “duty of candor” is an expression that will be lost on the average Notary. We suggest that it be reworded as: “A notary public or applicant for commission as a notary public shall comply with all requests of the Department for information related to an application for appointment, commissioning, investigations, and the performance of notarial acts.”

Section 167.47: We suggest reorganizing subsections (a), (b), and (c) as follows to make it clearer: “(a) To appear personally before a notary public under section 306 of the act (relating to personal appearance required) means that the individual for whom a notarial act is performed and the notary public are:

- (i) physically present before each other when the notarial act is performed;
- (ii) able to observe and interact with each other executing or notarizing the signature; and
- (iii) able to see, hear, communicate with and give identification documents to each other without the use of electronic devices such as telephones, computers, video cameras or facsimile machines.

Section 167.49

- In subsection (a)(2), we suggest striking the phrase “other forms of government identification



must be current, contain the signature or photograph of the individual to be identified, and must be satisfactory to the notary public" because it just duplicates what is in statute.

- Then, we suggest the following revision of subsection (a)(2): "For the purposes of section 307(b)(1)(ii) of the act, other forms of government identification are 'current' when the date of issuance, if any, is prior to the notarial act."

Section 167.50

- We respectfully urge the Department to strike subsection (a) on policy grounds. A Notary must certify to facts attested in a notarial act. In order to properly certify to those facts, the Notary must be able to determine unequivocally that the signer met all of the requirements for the notarial act. We believe relying on an interpreter to vouch that the signer took an oath, made an acknowledgment or satisfied any other requirement weakens the integrity of the notarial act.
- We also respectfully urge the Department to strike subsection (c). Essentially, it allows a Notary to notarize a translator's declaration. Notaries have been able to do this for quite some time. We believe it unnecessary to draw specific attention to it in the regulations.
- Subsection (b) could be moved under section 167.71. However, we suggest the subsection be shortened to read, "The certificate of notarial act must be worded and completed using the English language" with the remainder of the sentence eliminated. We believe that only English-language certificates should be used and authenticated with the Notary's signature and official stamp.

Section 167.52: In subsection (b)(2) we recommend insertion of the words "not in the physical presence of the notary public" after the word "signers" and then striking the remainder of the sentence.

Section 167.53

- We suggest striking "Notwithstanding that an individual who holds a notary commission is responsible for exercising the duties and responsibilities of the notary commission" and beginning the provision with the words, "An employer, ..."
- We suggest dividing 167.53 into two paragraphs and creating a new subsection (b) that states in the following or in similar words: "(b) Notwithstanding paragraph (a), an employer shall not cancel the surety bond of any employee who is a notary public nor require the employee to surrender a stamping device or commission certificate should the employee or employer terminate the employment."

Section 167.65

- We suggest the idea of "original" document throughout this entire section is problematic for a number of reasons, but chiefly because 57 Pa.C.S. 305(d) does not mention the word "original."
- Therefore, we recommend that subsection (b) be reworded as, "For paper records, the notary public shall compare the record to the copy of the record made by the requester or by the notary public to determine that the copy is a complete and accurate transcription or reproduction of the record which is copied."
- Similar to the above, we suggest subsection (c) be reworded as, "For electronic records, the notary public shall compare the record to the copy of the record made by the requester or by the notary public to determine that the copy is a complete and accurate transcription or reproduction of the record which is copied."
- We suggest subsection (d) is technically incorrect in asserting (or implying) that Notaries cannot



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certify a copy of a copy. 57 Pa.C.S. 305(d) does not impose this limitation. We recommend striking this subsection.

- We suggest subsection (e) be reworded as, "In issuing a certified or attested copy, the notary public does not guarantee the authenticity of the record that is copied, its contents or its effects."
- In subsection (h), we suggest moving the last sentence related to types of public records to after the first sentence.

Section 167.71

- For reasons we discussed in our comment on section 167.14(d), we recommend striking subsection (d) in its entirety. If a Notary's signature is illegible, the Notary's name is in the official stamp, which can identify the name of the Notary.
- If the Department, however, retains the policy of subsection (d), we suggest conforming subsection (d) to the edits suggested in our comments under section 167.14(d). The provision then would read, "When signing a notarial certificate, the notary public shall sign a legible handwritten signature on the certificate that matches the name in which the notary has applied and can be easily read by anyone examining or authenticating the signature. If an applicant's signature is not legible, the applicant shall legibly print his name near the signature."

Subchapter H

- Since these are rules to implement the RULONA, we suggest using the phrase "notarization of electronic records" throughout and not "electronic notarization" (see sections below for specific recommendations).
- Subchapter H could be titled "Notarization of Electronic Records."

Section 167.81

- The section should be captioned, "Notification regarding notarization of electronic records."
- RULONA does not use the terms "electronic notary public" or "e-notary." We suggest not using these terms in section 167.81. Instead, we suggest that subsection (b) read, "A notary public who wishes to perform notarial acts with respect to electronic records shall be authorized by the Department prior to performing any such notarial acts."
- Similar to the above, we suggest that subsection (c) read, "To obtain authorization to perform notarial acts with respect to electronic records, a notary public shall submit the following information to the Department in a manner prescribed by the Department: ..."
- In 167.81(c)(5), we suggest changing "electronic notarization solution provider" to "tamper-evident technology provider" since "tamper-evident technology" is the term used under the RULONA (See 57 Pa.C.S. Section 329(a)).

Section 167.82

- We suggest the section should be captioned, "Requirements for notarization of electronic records."
- We suggest changing the first use of "electronic notarization" to "tamper-evident technology" (see comment above) and the second instance ("any electronic notarization") with "notarial acts with respect to electronic records."

Section 167.98: We recommend that the caption, "List of attendees" be changed to "Record of attendees" to clarify that electronic records may be kept by education providers where no separate tangible list



exists. Conforming edits changing “a list” to “records” in subsection (a), “list” to “record” in subsection (b), “list” to “record” in subsection (c), and “a list” to “records” in subsection (d) should also be made.

Section 167.113: In subsection (b), we suggest changing the word “nature” to “form.”

Section 167.114

- We suggest that subsections (12) and (16) are so similar in subject matter to warrant combining into one provision. For example, subsection 12 could be eliminated if subsection 16 was amended to read, “Using the notary public’s official stamp or title for a purpose other than to perform a notarial act.”
- We suggest shortening subsection (18) to read, “Relating to commercial protests as defined in 13 Pa.C.S. § 3505(b) (relating to evidence of dishonor), a violation of section 167.66 of this chapter.”

Section 167.116

- We suggest reordering subsections (a) and (b).
- New subsection (a) could read: “Among the acts that constitute the practice of law in violation of section 325(a) of the act are the preparation, drafting or selection or determination of the kind of any legal document, or giving advice in relation to any legal documents or matters.”
- New subsection (b) could read, “In determining whether a notary public has violated section 325(a) of the act, the Department will take into consideration the factors in Pennsylvania Bar Association Unauthorized Practice of Law (UPL) Committee Formal Opinion 2006-01 or any successor document to that opinion.”

Section 167.117: We suggest shortening this provision to read, “For the purpose of the statements required under section 325(d) of the act (relating to prohibited acts), the term ‘prominently’ in section 325(d)(ii) means that the entire statement must be in at least 10-point type, and in section 325(d)(iii) that the entire statement must be displayed in an area open and accessible to the public at the place of performance of the notarial act.”