

3212

**Brown, Martha**

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**From:** Kathleen Butler <Kathleen@asnnotary.org>  
**Sent:** Friday, October 26, 2018 4:53 PM  
**To:** Brown, Martha  
**Subject:** ASN Comments, PA DOS Proposed RULONA Rules  
**Attachments:** ASN-Butler Comments PA RULONA ProposedRegs.pdf



Hello Martha—I hope this finds you well. It's been too long since we've spoken.

Thank you very much for providing your proposed rules to ASN for comment. They are thoughtful and comprehensive.

I've attempted to explain some of my suggestions through sidebar comments in the document. I should also point out that in general, I suggested deleting provisions that restated provision(s) of RULONA, just to streamline the content a smidge. You will readily recognize suggestions that are important to me, by my comments. Please don't hesitate to reach out for further explanation or clarification, and of course I'd value hearing your thoughts very much.

Hope the process continues smoothly for you! Have a great weekend and very best regards, kb

Kathleen Butler  
Executive Director  
American Society of Notaries  
850.671.5164 | [www.asnnotary.org](http://www.asnnotary.org)  
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Revision suggestions are highlighted and display as ~~strikethrough~~ and underscore.

TITLE 4. ADMINISTRATION  
PART VIII. BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION  
Subpart C. COMMISSIONS AND NOTARIES PUBLIC  
CHAPTER 161. FEES  
§ 161.1. Schedule of fees.  
[The Bureau of Commissions fee schedule shall conform with the following table:

Description Fees (in dollars)	
<b>COMMISSIONS</b>	
Commissioner of Deeds .....	\$25
Notary Public Commission .....	\$25
Railroad Police or Institutional Police Commission .....	\$5
Notice of Election of Sheriff (called Sheriff's Writ) .....	\$5
Treasures Commission .....	\$5
District Justices .....	\$3
Register of Wills Bond .....	\$2
Recorder of Deeds Bond .....	\$2
<b>CERTIFICATES</b>	
Great Seal Certificate .....	\$10
Certificate requiring Secretary's Seal .....	\$7
<b>MISCELLANEOUS</b>	
Writs including Great Seal .....	\$5
Filing Bond for any Public Office .....	\$2
Filing Recognizance for any Public Office .....	\$2
Photocopies .....	\$1

Department of State may charge equivalent fees for any service not specified.

NOTARY PUBLIC FEE SCHEDULE	
Executing affidavits (no matter how many signatures).....	\$5
Executing acknowledgments .....	\$5
In executing acknowledgments each additional name .....	\$2
Executing certificates (per certified copy) .....	\$5
Administering oaths (per individual taking an oath) .....	\$5

Taking depositions, per page .....	\$3
Executing verifications .....	\$5
Executing protests, per page .....	\$3

(a) The fees of the Bureau of Commissions, Elections and Legislation (Bureau) relating to commissions and notaries public, including fees for the public acts and transactions of the Secretary of the Commonwealth and the Department of State administered through the Bureau, are as follows:

Description

COMMISSIONS

Duplicate copy of commission .....	\$15
Duplicate copy of blank bond .....	\$3

CERTIFICATES

For certifying copies of any public papers or documents on file with the Bureau, the copy fee (if the Bureau furnished the copy), plus .....

For certifying matters of public record with the Bureau (including no record), the copy fee (if the Bureau furnished the copy), plus .....

MISCELLANEOUS

Photocopies (per page) .....	\$1
Master list of notaries public .....	\$50
Master list of notaries public approved to electronically notarize .....	\$50
Other notary public-related lists and data requests .....	\$25
Approval of notary public education course .....	\$700
Approval of revised lesson plan or re-approval of notary public education course .....	\$200

(b) The Bureau may charge equivalent fees for any service not specified.

(Editor's Note: The following section is proposed to be added and printed in regular type to enhance readability.)

§ 161.2. Notary public fee schedule

(a) The fees of notaries public as fixed by the Department of State under section 329.1 of the ~~act~~ Act (relating to fees of notaries public) for the notarial acts authorized under 57 Pa.C.S. Chapter 3 (relating to Revised Uniform Law on Notarial Acts) ~~act~~ ("the Act") are:

Taking acknowledgment .....	\$5
Taking acknowledgment (each additional name) .....	\$2
Administering oath or affirmation (per individual taking oath or affirmation) .....	\$5
Taking verification on oath or affirmation (no matter how many signatures) .....	\$5
Witnessing or attesting a signature (per signature) .....	\$5
Certifying or attesting a copy or deposition (per certified copy) .....	\$5
Noting a protest of a negotiable instrument (per page) .....	\$3

(b) A notary public shall provide an itemized receipt for all fees charged by the notary.

(c) A notary public may not charge any fee under subsection (a):

i. for notarizing the supporting affidavit required in an Emergency Absentee Ballot or the affidavit of a person needing assistance to vote an absentee ballot;

~~d. A notary public may not charge a fee under subsection (a)~~

ii. when other applicable law dictates that no fee may be charged. For example, see 51 Pa.C.S. § 9101-(relating to acknowledgments and administering oaths without charge).

(d) A notary public shall display or provide fees in accordance with section 329.1(c)(3) of the act.

(e) For purposes of display of fees under §329.1(c)(3) of the Act, a place of business is the notary public's business office, residence or any other location where the notary public performs a notarial act.

#### CHAPTER 163. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

##### § 163.1. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure), are applicable to the activities of and proceedings before the [Commission Bureau] Department of State relating to commissions and notaries public.

#### CHAPTER 165. [NOTARIES PUBLIC] (Reserved)

##### § 165.1. [Lesser offenses incompatible with the duties of a notary public—statement of policy.] (Reserved).

(a) The Secretary of the Commonwealth reviews applications for appointment to the office of notary public under section 5 of The Notary Public Law (Act) (57 P.S. § 151). Section 5(b)(1) of the ~~act Act~~ requires that the applicant may not have been convicted of or pled guilty or nolo contendere to a felony or a lesser offense incompatible with the duties of a notary public during the 5-year period preceding the date of the application.

(b) Misdemeanor crimes involving a lack of honesty or elements of falsehood and fraud (crimen falsi) are considered incompatible with the duties of a notary public, regardless of the jurisdiction in which crimes were committed.

(c) Under Pennsylvania law, misdemeanors include, but are not limited to, the following:

(1) Forgery and fraudulent practices which includes bad checks, insurance fraud and identity theft. See 18 Pa.C.S. Chapter 41 (relating to forgery and fraudulent practices).

(2) Theft which includes receiving stolen property and retail theft. See 18 Pa.C.S. Chapter 39 (relating to theft and related offenses).

(3) Criminal conspiracy if the underlying crime is incompatible. See 18 Pa.C.S. § 903 (relating to criminal conspiracy).

(4) Bribery. See 18 Pa.C.S. § 4701 (relating to bribery in official and political matters).

(5) Perjury or falsification in official matter which includes false swearing, unsworn falsification to authorities and tampering with evidence. See 18 Pa.C.S. Chapter 49, Subchapter A (relating to perjury and falsification in official matters).

(6) Obstructing governmental operations. See 18 Pa.C.S. Chapter 51, Subchapter A (relating to definition of offenses generally).

(d) The Secretary will consider all similar crimes committed in the courts of the United States or any other state, territory, possession or country to be incompatible with the duties of a notary public.]

(Editor's Note: The following chapter is proposed to be added and printed in regular type to enhance readability.)

#### CHAPTER 167. NOTARIES PUBLIC

##### Subchap.

##### A. GENERAL PROVISIONS

##### B. QUALIFICATIONS FOR APPOINTMENT AND COMMISSION

##### C. OFFICIAL STAMP, STAMPING DEVICE AND EMBOSSE

##### D. JOURNAL

E. STANDARDS OF PRACTICE  
F. NOTARIAL ACTS  
G. NOTARIAL CERTIFICATES  
H. USE OF ELECTRONIC NOTARIZATION  
I. NOTARY PUBLIC EDUCATION  
J. PROHIBITED ACTS AND SANCTIONS

Subchapter A. GENERAL PROVISIONS

Sec.

167.1. Scope.

167.2. Definitions.

§ 167.1. Scope.

This chapter implements the ~~act~~. ~~This chapter Act, and~~ governs the qualification, commissioning, notarial acts, conduct and discipline of notaries public in this Commonwealth.

§ 167.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

**Act**—57 Pa.C.S. Chapter 3 (relating to Revised Uniform Law on Notarial Acts).

**Address**—The term includes office and home, and must include street and number.

**Applicant**—An individual who seeks appointment or reappointment to the office of notary public.

**Appoint or Appointment**—The naming of an individual to the office of notary public after determination that the individual has complied with section 321(a) and (b) of the ~~act~~(**Act**) (relating to appointment and commission as notary public; qualifications; no immunity or benefit) and Subchapter B (relating to qualifications for appointment and commission) ~~of this chapter.~~

**Appointee**—An individual who has been appointed or reappointed to the office of notary public but who has not yet recorded the bond, oath of office and commission in compliance with section 321(d.2)(1) or (2) of the ~~act~~ **Act**.

**Bureau**—The Bureau of Commissions, Elections and Legislation of the Department or any successor bureau of the Department.

**Department**—The Department of State of the Commonwealth.

**Examination**—The examination described in § 167.15 (relating to notary public examination).

**Reappoint or reappointment**—~~The naming of an individual who previously held a commission as a notary public to the office of notary public after determination that the individual has complied with section 321(a) and (b) of the act and Subchapter B. The term includes “renewal of appointment.”~~ ~~includes “renewal of appointment” and means naming, to the office of notary public, an applicant~~

~~whose commission term is expiring or has ended and who has complied with Section 321(a) of the Act and Subchapter B of this chapter.~~

~~Spouse—An individual whose marriage to a notary public of this state is holding a marriage license evidenced by a marriage record issued or recognized under 23 Pa.C.S. §§ 1301—1310 (relating to marriage license); who is married to a notary public.~~

~~Tangible—Perceptible by touch when used in conjunction with “record,” “medium” or “symbol.”~~

#### Subchapter B. QUALIFICATIONS FOR APPOINTMENT AND COMMISSION

Sec.

167.11. Eligibility for appointment and commission—applicants not residing in this Commonwealth.

167.12. Eligibility for appointment and commission—applicants holding state and Federal office.

167.13. Eligibility for appointment and commission—deemed resignation.

167.14. Application for appointment.

167.15. Notary public examination.

167.16. Appointment and issuance of commission.

167.17. Appointment if bond, oath and commission not recorded within 45 days.

167.18. Reappointment.

§ 167.11. Eligibility for appointment and commission—applicants not residing in this Commonwealth.

~~(a) For purposes of §321(a)(3) of the Act, a non-resident applicant’s “employment or practice in this Commonwealth” shall be on an ongoing basis. If an applicant is not a resident of this Commonwealth, the applicant shall have a place of employment or practice in this Commonwealth.~~

~~(b) Employment or practice in this Commonwealth shall be on an ongoing basis.~~

~~(c) (b) The Bureau may request that employment or practice in this Commonwealth be evidenced by written confirmation from the employer that a notary public commission is required for employment or practice.~~

§ 167.12. Eligibility for appointment and commission—applicants holding state and Federal office.

The disqualifications of section 1 of the act of May 15, 1874 (P. L. 186, No. 120) apply to individuals who are elected or appointed to any office under the legislative, executive or judiciary departments of the United States government. Individuals who are employed by the legislative, executive or judiciary departments of the United States government, but who are neither elected nor appointed to office, are eligible for appointment and commission as a notary public.

§ 167.13. Eligibility for appointment and commission—deemed resignation.

~~If a notary public ceases to reside or work neither resides nor works in this Commonwealth, that notary public will be is deemed to have resigned from the office of notary public as of the date the that the that residency ceases or employment within this Commonwealth terminates ceased. A notary public who resigns that notary public’s commission in accordance with this section shall notify the Department in writing or electronically within 30 calendar days of the effective date of the such resignation.~~

§ 167.14. Application for appointment.

(a) The first-time applicant shall submit evidence of successful completion of a basic education course with the application for appointment.

- (b) The applicant for renewal of appointment shall submit evidence of successful completion of a continuing education course with the application for reappointment.
- (c) Applications for appointment shall be typed or legibly written.
- (d) The applicant's signature on the application must match the applicant's name as provided on the application. ~~The applicant shall use a legible handwritten signature which can be attributed to the applicant by anyone examining or authenticating the signature.~~ If an applicant's preferred signature is not legible, so that the name on the application cannot be discerned from the signature alone, the applicant shall also legibly print his name immediately adjacent to his preferred signature. For the purposes of this subsection, a signature is legible if the letters are distinct and easily readable and the notary public's full name may be determined by looking at the signature.

Commented [KB1]: I think it will be difficult for a notary to repeatedly create a signature that is consistent in appearance, when it is not the notary's natural, organic signature. Inconsistency in the signature's appearance can raise doubts that the same individual made each signature and could even open the door to forgery. I think that a notarial certificate should display the notary's natural signature and if it is illegible, then the name on the official stamp is there to identify the notary. I realize that a notary can forget to stamp a record, but I hope that isn't a rampant problem. Thank you for considering this.

Commented [KB2]: This works for the application. I have commented about it relative to the notarial certificate.

§ 167.15. Notary public examination.

- (a) ~~Under For purposes of~~ section 322(a) of the ~~act 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 in this Commonwealth shall pass an examination as a condition of appointment. An~~ applicant who does not hold a current commission as a notary public includes an applicant who never held a commission as a notary public and an applicant who previously held a commission as a notary public but whose commission has since expired.
- (b) ~~The written examination prescribed in 5322(a) of the Act by the Department to determine the fitness of an applicant to exercise the functions of the office of notary public is a proctored examination administered by the Department or an agent of the Department. The examination will be administered by a professional testing organization under contract with the Department at times, places and costs established by the professional testing organization, but in no case prior to submission of and approval by the Department of an application for appointment.~~
- (c) Examination results will be valid for a period of 1 year from the date of the examination.
- (d) An applicant shall attain a scaled score of 75 to pass the examination.
- (e) An applicant may retake the examination within a 6-month period as many times as necessary to pass, ~~but no more frequently than~~ ~~The maximum frequency with which the examination may be repeated is one time per 24-hour period.~~
- (f) ~~More information about the examination is available on the Department's web site at [www.dos.pa.gov/OtherServices/Notaries](http://www.dos.pa.gov/OtherServices/Notaries).~~

§ 167.16. ~~Appointment and issuance of commission Oath of office or registering official signature: satisfactory evidence of identity required.~~

- (a) ~~Upon determination that an applicant has complied with all requirements of the act and this chapter, the Department will appoint or reappoint the applicant to the office of notary public and issue a commission certificate.~~
- (b) ~~The Department will send the commission certificate to the recorder of deeds of the county where the appointee maintains an office.~~
- (c) ~~The Department will send the appointee notice that:~~
  - (1) ~~The commission certificate has been issued and sent to the proper recorder of deeds.~~
  - (2) ~~The appointee shall obtain a bond without delay.~~
  - (3) ~~The appointee shall appear within 45 calendar days of the date of appointment to take the oath of office before the recorder of deeds in the proper county and record the bond, oath and commission in the office of the recorder of deeds.~~

~~(4) The appointee shall register his official signature in the proper county and office within 45 calendar days of the date of appointment in accordance with section 321(d.1) of the act (relating to appointment and commission as notary public, qualifications, no immunity or benefit).~~

(d) Before taking the oath of office or registering an official signature, an appointee shall present satisfactory evidence of the appointee's identity as set forth in section 307(b) of the act (relating to identification of individual).

~~(e) After administering the oath of office, the recorder of deeds shall deliver the commission certificate to the notary public.~~

Commented [KB3]: It seems that all these steps are procedural. If you place them in rules, it will require rule amendment to change them. Perhaps this section should include only requirements that aren't stated in RULONA.

§ 167.17. Appointment if bond, oath and commission not recorded within 45 days.

(a) The commission of a notary public who fails to record the bond, oath and commission or register his official signature within 45 calendar days of appointment will be null and void.

(b) An appointee who fails to record the bond, oath and commission within 45 calendar days of appointment may apply for appointment or reappointment. ~~as set forth in subsection (c).~~

(c) The appointee shall do all of the following:

(1) Submit a new application for appointment or reappointment.

(2) Submit another application fee.

(3) Submit evidence of completion of education in compliance with § 167.14(a) or (b) (relating to application for appointment). The certificate of education must be valid at the time of application.

(4) Comply with §322(a) of the Act and § 167.15 of this chapter (relating to notary public examination).

Examination results must be valid at the time of application.

Commented [KB4]: Just verifying... The applicant may submit previously acquired proof of exam completion if it is still valid, yes?

§ 167.18. Reappointment.

Applications for reappointment to the office of notary public must be filed at least 60 calendar days prior to the expiration of the commission under which the notary public is acting.

#### Subchapter C. OFFICIAL STAMP, STAMPING DEVICE AND EMBOSSE

Sec.

167.21. Official stamp.

167.22. Stamping device.

167.23. Embosser.

§ 167.21. Official stamp.

(a) The official stamp of a notary public must show all of the following clearly in the following order:

(1) The words "Commonwealth of Pennsylvania—Notary Seal."

(2) The name as it appears on the commission of the notary public and the words "Notary Public."

(3) The name of the county in which the notary public maintains an office.

(4) The date the notary public's current commission expires.

(5) The seven-digit commission identification number assigned by the Department.

Example of stamp:

Commonwealth of Pennsylvania—Notary Seal

John Q. Doe, Notary Public

Dauphin County  
My commission expires May 19, 2019  
Commission number 1234567

- (b) Words or terms on the official stamp may not be abbreviated, except for name suffixes as specified in § 167.41(d) (relating to name of notary public).
- (c) The official stamp must be stamped or affixed to the notarial certificate near the notary public's signature or attached to or logically associated with an electronic record containing the notary public's signature.
- (d) ~~In addition to the prohibition in §315(e) of the Act, a~~ notary public may not place an imprint of the notary public's official stamp over any signature in a record to be notarized or over any writing in a notarial certificate.
- (e) A notary public may not alter or deface the official stamp.
- (f) A notary public may not use the notary public's official stamp for any purpose other than to perform a notarial act.
- (g) A notary public may not permit any other person to use the notary public's official stamp for any purpose.
- (h) A notary public may not use any other notary public's official stamp ~~instead of the notary public's own official stamp to perform a notarial act for any purpose.~~
- (i) A notary public who holds a commission on \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.), may continue to use his official stamp until the expiration of that commission, which may occur after \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.).

§ 167.22. Stamping device.

- (a) A stamping device, as used in sections 302 and 318 of the ~~act~~ Act (relating to definitions; and stamping device), does not include a noninking embosser or crimper.
- (b) A stamping device must be capable of affixing or logically associating the official stamp so that ~~the record to which the official stamp is~~ legibly reproduced when the record to which it is affixed or associated is reproduced or copied in any manner, affixed or associated may be copied, filmed, scanned or otherwise legibly reproduced.
- (c) The stamping device is the exclusive property of the notary public. The notary public shall maintain sole custody and control of the stamping device at all times during ~~the duration of the notary public's commission term.~~ When not in use, the stamping device must be kept in a secure location and that is accessible only to the notary public. A secure location includes in the notary public's sole possession or in a locked location to which only the notary public has access.
- (d) Notification of loss or theft of stamping device under section 318(b) of the ~~act~~ Act shall be made in writing or electronically to the Department within 10 calendar days after the date the notary public or personal representative or guardian discovers that the stamping device was lost or stolen. The notification must include all of the following:
  - (1) A statement of whether the stamping device is lost or stolen. For purposes of this subsection, "lost" also means loss, denial or termination of a notary public's access to his electronic stamp.
  - (2) An explanation of how the stamping device became lost or stolen.
  - (3) The date the notary public discovered that the stamping device was lost or stolen.
  - (4) A statement that the notary public does not possess the stamping device and does not know who possesses it or where it is located.

Commented [KB5]: Suggest deleting this because "sole possession or locked location" is already contemplated by the requirements of sole custody and control, and that the device must be kept in a secure location accessible only to the notary.

Commented [KB6]: A suggestion, meant to equate a notary's loss of access to an electronic stamp with the loss of access to a physical stamp due to theft, loss, etc. If the idea is sound then solution providers can help refine this language.

(5) A statement that if the notary public subsequently reacquires possession of the stamping device, the notary public shall file a written statement with the Department within 10 calendar days after the date the notary public reacquires possession of the lost or stolen stamping device, explaining how the stamping device was recovered.

(e) If a notary public subsequently reacquires possession of a lost or stolen stamping device, the notary public shall file with the Department a written statement of explanation of how the stamping device was recovered within 10 calendar days after the date the notary public reacquires possession of the stamping device the written statement described under §167.22(d)(5).

(f) An individual whose notary public commission has been suspended or revoked shall deliver the stamping device to the Department within 10 calendar days after notice of the suspension or revocation from the Department.

§ 167. 23. Embosser.

(a) A notary public may use an embossed or crimped image in the performance of a notarial act and only in conjunction with the use of an official stamp.

(b) A notary public may not place the embossing or crimping embossed or crimped image over any signature or printed material in a record to be notarized or over any signature or printed material in a notarial certificate.

Subchapter D. JOURNAL

Sec.

167.31. Identification of notary public in journal.

167.32. Journal entries.

167.33. Form and content of journal maintained on a tangible medium.

167.34. Form and content of an electronic notarial journal.

167.35. Custody and control of journal; notification of lost or stolen journal.

167.36. Inspection and certified copies of journal; response to subpoenas and investigative requests.

§ 167.31. Identification of notary public in journal.

(a) Each journal of a notary public, whether maintained on a tangible medium or in an electronic format, must contain all of the following information in any order (replace colon with period)

(1) The notary public's:

- i. The Name of the notary public as it appears on the commission.
- ii. The notary public's Commission number.
- iii. The notary public's Commission expiration date.
- iv. The notary public's Office address of record with the Department.
- v. Signature

~~(5)~~ (2) A statement that, in the event of the death of the notary public, the journal shall be delivered or mailed to the office of the recorder of deeds in the county where the notary public last maintained an office.

~~(6)~~ (3) The meaning of any not commonly abbreviated word or symbol used in recording a notarial act in the notarial journal.

~~(7)~~ The signature of the notary public

(b) If a notary public's name, commission expiration date, or address or signature changes before the notary public ceases to use the notarial journal, the notary public shall add the new information after the old information and the date which the information changed.

Commented [KB7]: If name changes, the signature will change too. Or the signature may change from one commission to next due to applying with a different legal name variation.

§ 167.32. Journal entries.

- (a) Separate entries. Each notarial act must be indicated as a separate entry in the journal.
- (b) Optional entries. In addition to the entries required under section 319(c) of the ~~Act~~ Act (relating to journal), a journal may contain the signature of the individual for whom the notarial act is performed and any additional information about a specific transaction that might assist the notary public to recall the transaction.
- (c) Prohibited entries. A journal may not contain any ~~personal financial or identification~~ personally identifiable information about the notary public's clients, such as complete Social Security numbers, complete drivers' license numbers or complete account numbers. Terminal numbers for these types of numbers, including the last four digits of a Social Security number, may be entered in a journal record used to clarify which individual or account was involved.

- ~~(b)~~ (d) ~~Personal financial or identification~~ Personally identifiable information. For the purpose of subsection (c), "~~personal financial or identification~~ personally identifiable information" means:
- (1) An individual's first name or first initial and last name in combination with and linked to any one or more of the following data elements when the data elements are not encrypted or redacted:
- (i) Social Security number.
  - (ii) Driver's license number or a State identification card number issued instead of a driver's license.
  - (iii) Financial account number, credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account.
- (2) The term does not include publicly available information that is lawfully made available to the general public from Federal, State or local government records.

~~(d)~~ (e) Fees. Each notarial fee charged should correspond to the notarial act performed. If a fee is waived or not charged, the notary public shall indicate this fact in the journal entry using notations such as "n/c," "0" (zero) or "-" (dash). Clerical and administrative fees, if charged, shall be separately itemized in the journal.

(e) (f) Address. For purpose of journal entries, address means the city and state only.

~~(g) Transitional provision. A notary public who holds a commission on \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.), may continue to use the notary public's journal until the expiration of that commission, which may occur after \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.).~~

§ 167.33. Form and content of journal maintained on a tangible medium.

- (a) A journal maintained on paper or on any other tangible medium may be in any form that meets the physical requirements in this section and the entry requirements in section 319(c) of the ~~Act~~ Act (relating to journal).
- (b) The cover and pages inside the cover must be bound together by any binding method that is designed to prevent the insertion, removal or substitution of the cover or a page. This includes glue, staples, grommets or another binding, but does not include the use of tape, paperclips or binder clips.
- (c) Each page must be consecutively numbered from the beginning to the end of the journal. If a journal provides two pages on which to record the required information about the same notarial act, both pages may be numbered with the same number or each page may be numbered with a different number. A page number must be preprinted.

Commented [KB8]: Will clerical and administrative fees be allowed? They are no longer specifically addressed in §161.2.

Commented [KB9]: "Separately Itemized" may need clarification. I think notaries will understand that clerical/admin charges should be separated from the fees for notarial acts, but then shall clerical/admin themselves be line itemed?

Commented [KB10]: Might you consider deleting this? It seems to require that a notary obtain a new journal with every new commission term. The rules seem to contemplate otherwise in 167.31's requirement that new commission number, new name, etc. shall be added to an existing journal.

- (d) Each line, or entry if the journal is designed with numbered entry blocks, must be consecutively numbered from the beginning to the end of the page. If a line extends across two pages, the line must be numbered with the same number on both pages. A line or entry number must be preprinted.
- (e) For purposes of the Act and this chapter, the term "journal" includes a notary register.

Commented [KB11]: This was in a prior version of the rules. I think it may be useful to include this in final rules, to be very clear that RULONA and rule provisions for the "journal" apply to the (same) item that used to be called a "notary register."

§ 167.34. Form and content of an electronic notarial journal.

- (a) A journal maintained in electronic format may be in any form that meets the requirements in this section and the entry requirements in section 319(c) of the act Act (relating to journal).
- (b) A journal maintained in electronic format must be designed to prevent the insertion, removal or substitution of an entry.
- (c) A journal maintained in electronic format must be securely stored and recoverable in the event of a hardware or software malfunction.
- (d) Entries from the notarial journal must be available upon request by the Department in a PDF format.
- (e) If a signature of a signer is in an electronic notarial journal, the signature must be:
- (1) Attached to or logically associated with the electronic journal.
  - (2) Linked to the data in a manner so that any subsequent alterations to the electronic notarial journal entry are detectable and may invalidate the electronic notarial journal entry.
- (f) A journal maintained in electronic format which is delivered to the office of the recorder of deeds in compliance with section 319(e) of the act Act must be delivered in a format prescribed by the receiving recorder of deeds.

Commented [KB12]: Since the principal's signature is not a basic requirement for any journal entry, perhaps it should not be a specified means by which the journal is rendered tamper-evident. Sec. 319(b) of the Act already requires that an electronic journal be tamper-evident, and technologies that include a journal will have to meet that requirement, so I feel the statutory reference is sufficient.

§ 167.35. Custody and control of journal; notification of lost or stolen journal.

- (a) The notary public shall maintain sole custody and control of the journal at all times during the duration of the notary public's commission term. When not in use, the journal must be kept in a secure location and that is accessible only to the notary public. A secure location includes in the notary public's sole possession or in a locked location to which only the notary public has access. If the journal is in an electronic format, a secure location includes accessible only to the notary public by use of a password or other secure means of authentication.
- (b) Notification of loss or theft of journal under section 319(d) of the act Act (relating to journal) must be made in writing or electronically within 10 calendar days after the date the notary public or personal representative or guardian discovers the loss or theft of a journal. For the purpose of this section, the term "loss" includes journals that are misplaced, destroyed or otherwise made unavailable. The notification must include all of the following:
- (1) A statement of whether the journal is lost or stolen.
  - (2) An explanation of how the journal became lost or stolen.
  - (3) The date the notary public discovered that the journal was lost or stolen.
  - (4) A statement that the notary public does not possess the journal and does not know who possesses it or where it is located.
  - (5) A statement that if the notary public subsequently reacquires possession of the journal, the notary public shall file a written statement with the Department within 10 calendar days after the date the notary public reacquires possession of the lost or stolen journal, explaining how the journal was recovered.
- (c) If a notary public subsequently reacquires possession of a lost or stolen journal, the notary public shall file with the Department a written statement of explanation of how the journal was recovered

Commented [KB13]: Suggest deleting this because "sole possession or locked location" is already contemplated by the requirements of sole custody and control, and that the journal must be kept in a secure location accessible only to the notary.

~~within 10 calendar days after the date the notary public reacquires possession of the journal, the written statement required under §167.35(c).~~

§ 167.36. Inspection and certified copies of journal; response to subpoenas and investigative requests.

~~(a) Inspection. The a notary public shall permit inspection of the journal to any person requesting to view the journal it. A request to inspect a notary public's journal records must be reasonable in scope and specify the particular entry or time period of records to be inspected. A request may, but is not required to be, in writing.~~

(b) Certified copies. A request for certified copies of the journal made in accordance with section 319(g.1) of the ~~not Act~~ (relating to journal) must be reasonable in scope and specify the particular entry or time period sought. A request may, but is not required to be, in writing. The notary public shall provide the certified copy within 10 calendar days of receipt of the request. ~~If the scope of the request is not clear, the notary public may offer to have the requester inspect the journal at the notary public's office to identify the specific pages or dates that the requester is seeking.~~

(c) Subpoenas and investigative requests. ~~A notary public shall comply with~~ a request for inspection or certified copies of a journal made through an investigative request by law enforcement or by the Department or in a subpoena in the course of criminal or civil litigation. ~~The notary public shall comply shall be complied with~~ in the manner specified in the request or subpoena.

Commented [KB14]: Just a suggestion. I realize the journal is considered a public record, but perhaps the requester should experience a little friction to help weed out those on an information-fishing expedition.

Commented [KB15]: Perhaps this permissive clause isn't necessary, since subsection (a) of the rule provides any requester access to inspect a journal.

#### Subchapter E. STANDARDS OF PRACTICE

Sec.

167.41. Name of notary public.

167.42. Notification of change in information.

167.43. Change of name.

167.44. Authority of notary public to perform notarial act.

167.45. Conflict of interest.

167.46. Duty of candor.

167.47. Personal appearance.

167.48. Identification of individual appearing before notary public—personal knowledge.

167.49. Identification of individual appearing before notary public—satisfactory evidence.

167.50. Language and use of interpreter.

167.51. Refusal to perform notarial acts.

167.52. Notarizing ~~documents records~~ which contain blank spaces.

167.53. Employer-employee relationship.

§ 167.41. Name of notary public.

(a) ~~Any reference in~~ Whenever the Act and this chapter refer to the name of a notary public means, the reference is to the notary public's legal name of the notary public as it appears on his the notary public's current commission and oath of office.

(b) For the purposes of this chapter, ~~the a notary public's~~ legal name on the notary public commission and oath of office must be proven by satisfactory evidence in accordance with section 307(b) of the ~~not Act~~ (relating to identification of individual). Unless proven otherwise, ~~the name of a notary public a~~ notary public's name consists of any one of the following:

(1) A first personal name (first name), additional name or initial (middle name or initial), and surname (family or last name).

(2) A first name and last name, omitting the middle name or middle initial.

Commented [KB16]: Who is to perform this ID proofing? (Forgive me, our business doesn't involve processing applications; it may be something everyone else knows.)

(3) A first initial, middle name and last name.

(c) Neither initials alone nor nicknames will be accepted on the application or as part of the signature required on a notarial act.

(d) ~~The name of~~ A notary public's name may include suffixes such as Junior, Senior, II, III, IV or any abbreviations thereof. ~~The name of~~ A notary public's name may not include prefixes, suffixes or titles such as "Doctor," "Reverend," "Esquire" or any abbreviations thereof.

§ 167.42. Notification of change in information.

(a) A notary public shall notify the Department within 30 calendar days of any change in the information on file with the Department, including the notary public's:

(1) Legal name.

(2) Office address (includes place of employment or practice in this Commonwealth, if not a resident of this Commonwealth).

(3) Home address.

(4) Name of electronic notarization vendor.

(5) Voluntary resignation.

(b) The notice may be made in writing or electronically and must state the effective date of the change.

(c) Notice of a change in legal name on file with the Department must be on a form prescribed by the Department and accompanied by evidence of the name change (such as a marriage certificate, court order or divorce decree).

(d) Notice of a change in legal name on file with the Department shall also be made to the recorder of deeds of the county in which the notary public maintains an office.

§ 167.43. Change of name.

(a) ~~When the legal name of a notary public is changed, the notary public~~ A notary public whose legal name has changed may continue to perform official acts in the name in which he was commissioned until the expiration of his current term.

(b) ~~The Department will mark the public records relating to the notary public name change. Application for reappointment of the notary public shall be made in the new name.~~

Commented [KB17]: These facts seem self-evident....?

§ 167.44. Authority of notary public to perform notarial act.

(a) A notary public may perform the notarial acts authorized by the ~~act~~ Act in any county in this Commonwealth.

(b) Notaries public may not perform the notarial acts authorized by the ~~act~~ Act ~~when located in other states or jurisdictions~~ outside the geographical borders of this Commonwealth ~~or in other states or jurisdictions~~, unless authorized by the other state or jurisdiction to perform the acts.

§ 167.45. Conflict of interest.

(a) In accordance with section 304(b) of the ~~act~~ Act (relating to authority to perform notarial act), a direct or pecuniary interest includes an interest in the transaction or record that results in actual or potential gain or advantage, financial or otherwise, other than receiving a regular salary, hourly wage or notarial fees. Regular salary or wage includes bonuses, provided the bonus is not related to or contingent upon the completion of a notarial act.

(b) A notary public ~~shall not notarize his own signature~~ ~~may not perform a notarial act with respect to a record that the notary public is signing.~~

**(c)** A notary public may perform a notarial act with respect to a record that the notary public's spouse is signing, only if the notary public and the notary public's spouse have no direct or pecuniary interest in the record.

**§ 167.46. Duty of candor.**

A notary public or an applicant for appointment and commission as a notary public has a duty of candor to the Department in all matters relating to the appointment and commission of the notary public and the performance of notarial acts, including an application for appointment or reappointment, and any request for information made by the Department.

**§ 167.47. Personal appearance.**

(a) To appear personally before a notary public under section 306 of the ~~act~~ **Act** (relating to personal appearance required) is to be physically present before the notary public when the notarial act is executed.

~~(b) The notary public shall be able to observe and interact with the individual making the statement or executing the signature.~~

(c) The notary public and the individual for whom a notarial act is being performed shall be 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.

(d) Personal appearance does not include ~~all of the following~~:

- (1) Appearance by video technology even if the video is live or synchronous; ~~or~~
- (2) Appearance by audio technology.

Commented [KB18]: Covered in subsection (c).

**§ 167.48. Identification of individual appearing before notary public—personal knowledge.**

When a notary public has personal knowledge of the identity of an individual, satisfactory evidence is not required.

**§ 167.49. Identification of individual appearing before notary public—satisfactory evidence.**

(a) General.

(1) For the purposes of section 307(b)(1)(i) of the ~~act~~ **Act** (relating to identification of individual), a notary public may rely upon any of the following:

(i) A passport or passport card issued by the United States Department of State which is current and unexpired.

(ii) A passport issued by a foreign government, which is current and unexpired, provided it uses letters, characters and a language that are read, written and understood by the notary public.

(iii) A driver's license or nondriver identification card issued by a state of the United States, which is current and unexpired.

(iv) A driver's license or nondriver identification card issued by a state or territory of Canada or Mexico, which is current and unexpired, provided it uses letters, characters and a language that are read, written and understood by the notary public.

(2) For the purposes of section 307(b)(1)(ii) of the ~~act~~ **Act**, 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. When there is a date of issuance on the other form of government identification specified in paragraph (3), it must be a date prior to the notarial act.

(3) For the purposes of section 307(b)(1)(ii) of the ~~act~~ **Act**, other forms of government identification may include any of the following:

(i) An identification card issued by any branch of the United States armed forces.

- (ii) An inmate identification card issued by the Department of Corrections for an inmate who is currently in the custody of the Department of Corrections.
- (iii) An identification card issued by the United States Department of Homeland Security.
- (iv) A Social Security card.
- (v) A Medicare card.
- (vi) A State or State-related university identification card.
- (b) Credible witness.
  - (1) The identity of the individual appearing before the notary public may be established by the affidavit of a single credible witness personally known to the notary public and who personally knows the document signer.
  - (2) A credible witness under §307(b)(2) may not have a direct or pecuniary interest with respect to the record being notarized.
  - (3) The credible witness shall make a verification on oath or affirmation that the following is true:
    - (i) The individual appearing before the notary public is the person named in the document record.
    - (ii) The credible witness personally knows the individual appearing before the notary public through dealings sufficient to provide the credible witness with reasonable certainty that the individual has the identity claimed.

§ 167.50. Language and use of interpreter.

- (a) A notary public ~~shall be able to must~~ communicate directly with the individual for whom a notarial act is being performed in a language they both understand, without use of an interpreter, ~~or indirectly through an interpreter who is physically present with the signer and notary public at the time of the notarization and communicates directly with the individual and the notary public in a language the interpreter understands.~~
- (b) The certificate of notarial act must be worded and completed using the English language. ~~The certificate may be simultaneously worded and completed in another language that is read, written and understood by the notary public and must be immediately adjacent to the English language certificate, but the English language certificate will prevail in the event of any conflict between the translations.~~
- (c) ~~A notary public may perform a notarial act on a document that is a translation of a document that is in a language that the notary public does not understand only if the person performing the translation signs a verification on oath or affirmation stating that the translation is accurate and complete. The notarized translation and verification must be attached to the document and must comply with the act and this chapter regarding certificate of notarial act.~~

§ 167.51. Refusal to perform notarial acts.

A notary public may not refuse to provide notarial services on the basis of a customer's race, color, National origin, religion, sexual orientation, sex or gender (including pregnancy), gender identity or expression, disability or marital status.

§ 167.52. Notarizing documents records which contain blank spaces.

- (a) A notary public may not perform a notarial act with respect to a record which is designed to provide information within blank spaces, when either of the following circumstances exist:
  - (1) ~~The missing information has not been entered into~~ A blank space is missing information.
  - (2) ~~The signature of an individual signing the record is not present, The record is not signed by the individual whose execution of the record requires a notarial act,~~ unless the individual is signing in the presence of the notary public.

Commented [KB19]: Please consider accepting this recommendation. Direct one-to-one communication between the notary and signer is a widely accepted best practice and is the basis for the notary's certainty that the formalities of administration of an oath or taking of an acknowledgment have been knowingly executed. Thank you for considering this.

Commented [KB20]: This is concerning as well. Completion of a notarial certificate in the English language is another widely accepted notarial procedure and required in many states. The presence of two notarial certificates could create confusion after the notarization. The notary should not sign and seal a certificate that he or she cannot read, even if it is purported to contain the same wording that is also present in the English language certificate. Thanks for considering this.

Commented [KB21]: If I'm reading this correctly, the notary would notarize the translation, not the source document ("A notary may notarize a document that is a translation..."). The translated document would presumably be in English, so the translator's affidavit wouldn't be necessary for the notary to perform the formalities of notarization. The notary's only concern is the actual document notarized, not whether it matches another document that he did not notarize. The affidavit might assure the relying parties that the notarized translation's content reflects that of the source document, but that objective seems outside the boundaries of notarial responsibility. Again, thank you for considering these thoughts.

(b) For the purpose of subsection (a)(1), missing information does not include:

(1) An empty space with "N/A" or a line drawn through it.

(2) Additional signature lines designated for additional signers who are not present before the notary, ~~if it is clear that the notarial act does not apply to the blank signature lines.~~

(c) A notary public performing a notarial act on nomination petitions or nomination papers with remaining empty lines for signatures shall mark a line through those blank spaces for signatures, or an "X" across the blank spaces for signatures, to prevent the later addition of signatures after the notarization.

Commented [KB22]: If the additional signers who have not yet signed the record are subject to a notarial act and they are not present before this notary, they may see a different notary at a different time, or the same notary at a different time than the present signer.

§ 167.53. Employer-employee relationship.

~~Notwithstanding that an individual who holds a notary commission is responsible for exercising the duties and responsibilities of the notary commission,~~ An employer, under an agreement with an employee who is, or seeks to become, a notary public, may pay for the education, testing, application or bond and the cost of the official stamp or other supplies required in connection with the appointment, commission or performance of the duties of the notary public. The agreement may also provide for the remission of fees collected by the notary public to the employer, for the increased compensation of the notary public for the amount of notary public fees collected and for reimbursement of the costs of obtaining a commission should the employee or employer terminate the employment.

~~An employer may establish policies to ensure that an employee notary's provision of notarial services to the public does not impede the employee notary's work-related duties. Such employer policies do not apply to the employee notary's activities during non-work hours.~~

Commented [KB23]: These two paragraphs are just suggestions, although the second provision is generally quite helpful to employee notaries.

~~An employer shall not cancel a surety bond or keep the stamping device, journal(s) or commission of a current or former employee notary public, regardless if the employer paid the costs of obtaining these items.~~

## Subchapter F. NOTARIAL ACTS

Sec.

167.61. Acknowledgments.

167.62. Oaths and affirmations.

167.63. Verifications on oath or affirmation.

167.64. Witnessing or attestation of signatures.

167.65. Certified or attested copies and depositions.

167.66. Protests of negotiable instruments.

§ 167.61. Acknowledgments.

(a) The individual making the acknowledgment shall appear personally before the notary public.

(b) The notary public shall have personal knowledge or satisfactory evidence of the identity of the individual making the acknowledgment.

(c) A record requiring acknowledgment may be signed in the notary public's presence or a record may be signed prior to the acknowledgment. A record may not be signed subsequent to an acknowledgment.

~~(d) If the record is signed prior to appearance before the notary public, the individual making the acknowledgment shall acknowledge that the signature on the record is his own voluntary act.~~

~~(e)~~ (d) The notary public shall compare the signature on the record to the signature of the individual on the identification presented.

~~(e) In taking an acknowledgment, the notary public shall require the individual to acknowledge signing the record voluntarily, for the purpose stated in the record.~~

§ 167.62. Oaths and affirmations.

(a) The individual taking the oath or affirmation shall appear personally before the notary public.

(b) The notary public shall have personal knowledge or satisfactory evidence of the identity of the individual taking the oath or affirmation.

(c) An oath or affirmation may be verbal or in writing. If in writing, the oath or affirmation shall be signed in the presence of the notary public.

(d) In administering an oath or affirmation, the notary public shall require the individual taking the oath or affirmation to voluntarily swear or affirm that the statements contained in the oath or affirmation are true or that the individual will perform an act or duty faithfully and truthfully.

§ 167.63. Verifications on oath or affirmation.

(a) The individual making the verification on oath or affirmation shall appear personally before the notary public.

(b) The notary public shall have personal knowledge or satisfactory evidence of the identity of the individual making the verification on oath or affirmation.

(c) A record containing a statement that is being verified on oath or affirmation shall be signed in the notary public's presence. A record containing a statement that is being verified may not be signed prior to or subsequent to the verification on oath or affirmation.

(d) The notary public shall compare the signature on the statement verified to the signature of the individual on the identification presented.

(e) In taking a verification on oath or affirmation, the notary public shall administer an oath or affirmation to the individual making the statement and require that the individual voluntarily swear or affirm that the statements contained in the record are true.

§ 167.64. Witnessing or attestation of signatures.

(a) The individual signing the record shall appear personally before the notary public.

(b) The notary public shall have personal knowledge or satisfactory evidence of the identity of the individual signing the record.

(c) A record containing a signature that is being witnessed or attested shall be signed in the notary public's presence. A record containing a signature that is being witnessed or attested may not be signed prior to or subsequent to the witnessing or attestation of the signature.

(d) The notary public shall compare the signature on the record signed to the signature of the individual on the identification presented.

~~(e) The notarial act of witnessing or attesting a signature differs from an acknowledgment in that the party relying on the record may know for certain that the record was signed on the same date that the notary public affixed the official stamp and signature to the document.—~~

~~(f) The act of witnessing or attesting a signature differs from a verification on oath or affirmation in that the signer is merely signing the record, not swearing or affirming that the contents of the record are true.~~

~~(e) In witnessing or attesting a signature, the notary public shall certify that the record was signed in his presence at the place and on the date indicated.~~

§ 167.65. Certified or attested copies and depositions.

(a) The notary public shall be presented with the record, which may be in the possession of the requester, or in the case when there is an official repository of records, in the care and possession of the notary public who may be the custodian of the official archive or collection.

(b) For paper records, the notary public shall compare the ~~original document~~ paper record to a copy of ~~the paper 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 ~~original paper~~ record. The copy may be made by the requester or by the notary public.

(c) For electronic records, the notary public shall compare the ~~original~~ electronic record to a copy of ~~the electronic 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 ~~original~~ electronic record. The copy may be made by the requester or by the notary public.

(d) The notary public shall examine the record for alteration or tampering, ~~and to ensure that the original record itself is not a copy.~~

(e) In issuing a certified or attested copy, the notary public does not guarantee the authenticity of the ~~record that is copied.~~ ~~original document~~, its contents or its effects.

(f) Records for which a notary public may not issue a certified copy include all of the following:

- (1) Vital records (birth and death certificates).
- (2) United States Naturalization Certificates.
- (3) Any government-issued record that on its face states "do not copy," "illegal to copy" or words of similar meaning.
- (4) Any record that is prohibited by law to copy or certify.
- (g) Subject to subsections (f)(4) and (h), records for which a notary public may issue a certified copy include all of the following:
  - (1) Public records.
  - (2) Passports.
  - (3) Drivers' licenses.
  - (4) Transcripts.
  - (5) Diplomas.
  - (6) Contracts.
  - (7) Leases.
  - (8) Bills of sale.
  - (9) Medical records, consents or waivers.
  - (10) Powers of attorney.

(h) For purpose of this section, a public record is defined as any record that is filed in or issued by a domestic or international Federal, state or local government agency. If the record is intended to be sent overseas and will require an apostille or certification from the United States Department of State or from the Department, the record must be certified by the office where the original or official copy of the record is maintained or by the public official who issued the record. Examples of public records include deeds, marriage records, court orders and corporate documents filed with a state office or state repository as the official record.

§ 167.66. Protests of negotiable instruments.

(a) A protest is a certificate of dishonor made by a United States consul or vice consul or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must:

- (1) Identify the negotiable instrument.

Commented [KB24]: "Original" is a traditional term that has been clear relative to paper records, but not for electronic records. The notary may have no means of determining whether an electronic document is truly an "original." I suggest that it's sufficient for the notary to certify that a copy is an accurate reproduction of a paper or electronic record, as applicable, with no determination of document "originality." Notably, the RULONA short form for this act does not include the term "original record." Thank you for considering this.

- (2) Certify either that presentment has been made or, if not made, the reason why it was not made.
- (3) State that the instrument has been dishonored by nonacceptance or nonpayment.
- (b) The protest may also certify that notice of dishonor has been given to some or all parties.
- (c) The individual requesting the protest shall appear personally before the notary public and be identified in the protest as the holder of the dishonored negotiable instrument.
- (d) The notary public shall have personal knowledge or satisfactory evidence of the identity of the individual requesting the protest.

Subchapter G. NOTARIAL CERTIFICATES

Sec. 167.71. Certificate of notarial act.

§ 167.71. Certificate of notarial act.

- (a) "Commonwealth of Pennsylvania" may be used instead of "State of Pennsylvania" on certificates of notarial acts.
- (b) For a certificate to be sufficient, it must contain the information required under section 315(c) of the ~~Act~~ Act (relating to certificate of notarial act). A certificate may contain other information as may be required ~~by other law of this Commonwealth, to satisfy any legal requirements, ethical or legal concerns, or the business needs of the parties to the transaction.~~
- (c) For purposes of attaching a notarial certificate to a tangible record, "securely attached" means stapled, grommeted or otherwise bound to the tangible record. The term "securely attached" does not include the use of tape, paperclips or binder clips.
- (d) When signing a paper certificate, the notary public shall ~~sign in the manner on file with the Secretary of the Commonwealth, use a legible, recognizable handwritten signature, which can be attributed to the notary public performing the notarial act by anyone examining or authenticating the signature.~~ If a notary public's preferred signature is not legible and recognizable, the notary public must also legibly print his name immediately adjacent to his preferred signature ~~or as near as possible to it.~~ For the purposes of this subsection, a signature is legible and recognizable if the letters are distinct and easily readable and the notary public's full name may be clearly discerned by looking at the signature.

Commented [KB25]: I feel this language would open the door to the notary making certifications in a notarial certificate that are not authorized acts under RULONA, especially the provision for "business needs."

Commented [KB26]: I understand the need here, but I think it will be difficult for a notary to repeatedly create a signature that is consistent in appearance, when it is not the notary's natural, organic signature. Inconsistency in the signature's appearance can raise doubts that the same individual made each signature and could even open the door to forgery. I think that a notarial certificate should display the notary's natural signature and if it is illegible, then the name on the official stamp is there to identify the notary. I realize that a notary can forget to stamp a record, but I hope that isn't a rampant problem. Thank you for considering this.

Commented [KB27]: The following edits are to align terminology with RULONA. Otherwise you may wish to define terms such as "electronic notarization," "electronic notary or e-notary," "solution provider" that do not appear in RULONA.

Subchapter H. USE OF ELECTRONIC NOTARIZATION

Sec.

- 167.81. Notification regarding ~~use of electronic~~ notarization of ~~electronic records~~.
- 167.82. ~~Electronic notarization~~ Requirements, ~~notarization of electronic records~~.

Notification regarding ~~use of electronic~~ notarization of ~~electronic records~~.

- (a) A notary public who wishes to perform notarial acts with respect to electronic records shall hold a current ~~and unrestricted~~ commission ~~that is not restricted by suspension or other administration action.~~
- (b) A notary public ~~who wishes to perform notarial acts with respect to electronic records~~ shall be authorized by the Department to act as an "electronic notary public" or "e-notary" prior to performing notarial acts with respect to electronic records.
- (c) To obtain authorization as an "electronic notary public" or "e-notary," a notary public shall submit the following information to the Department in a manner prescribed by the Department:
  - (1) Name of notary public.
  - (2) Commission number.

- (3) Office address.
- (4) E-mail address.
- (5) ~~Tamper-evident technology name of electronic notarization solution or provider.~~
- (6) ~~Tamper-evident technology or provider's contact information for solution provider.~~
- (7) ~~Tamper-evident technology or provider's web site for solution provider.~~

§ 167.82. Electronic notarization requirements.

(a) A notary public performing notarial acts with respect to electronic records shall use ~~an electronic notarization solution~~ a tamper-evident technology approved by the Department. Before performing any electronic notarization, the notary public shall take reasonable steps to ensure that the tamper-evident technology solution used is valid and has not expired, been revoked or been terminated by the solution provider.

(b) All requirements of a notarial act performed with respect to a tangible record apply to an electronic record, including the personal appearance and identification of the individual appearing before the notary public, completion of a notarial certificate, use of an official stamp and recording of the notarial act in the journal.

Subchapter I. NOTARY PUBLIC EDUCATION

Sec.

- 167.91. Definitions.
- 167.92. Provider certificate of approval.
- 167.93. Lesson plan.
- 167.94. Deficient application or lesson plan.
- 167.95. Notification of changes of provider information.
- 167.96. Lesson plan revisions.
- 167.97. Certificate of education.
- 167.98. List of attendees.
- 167.99. Representatives of the Department attending approved course of study.
- 167.100. Duty to respond to a written request from the Department.
- 167.101. Cancellation or delay of scheduled approved course of study.
- 167.102. List of approved notary public education courses.
- 167.103. Termination of certificate of approval.
- 167.104. Cancellation of certificate of approval.

§ 167.91. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Certificate of approval—A certificate issued by the Department under § 167.92 (relating to provider certificate of approval) signifying that the provider named therein offers an education program curriculum preapproved by the Department and has complied with the requirements of this subchapter. The certificate of approval does not imply endorsement of any other products or services offered by the provider.

Certificate of education—A certificate issued by a provider under § 167.97 (relating to certificate of education) signifying that the person named therein has successfully completed the approved education program provided by the provider.

**Course of study**—Basic or continuing education, offered by live classroom instruction, correspondence course or interactive distance education means, such as online through the Internet or other network technologies.

**Notary public applicant**—A person who is required to attend a course of study to qualify for a commission as a notary public.

**Pennsylvania business registration number**—The number assigned by the Department's Bureau of Corporations and Charitable Organizations to a business entity or fictitious name registrant that is authorized to conduct business in this Commonwealth.

**Provider**—An individual or business entity that offers, supplies or provides an approved notary public education course of study.

**§ 167.92. Provider certificate of approval.**

(a) Before offering any course of study under section 322(b) or (c) of the ~~not~~ **Act** (relating to examination, basic education and continuing education), a provider shall obtain a certificate of approval from the Department for each course of study offered.

(b) To apply for a certificate of approval, a provider shall submit to the Department a completed Notary Public Education Provider Application or Amendment form on a form prescribed by the Department, an active Pennsylvania business registration number, the fee required under the Department and a lesson plan satisfying the requirements of § 167.93 (relating to lesson plan).

(c) The Department will issue either a certificate of approval, in accordance with subsection (d), or a deficiency notice, in accordance with § 167.94 (relating to deficient application or lesson plan), within 90 calendar days of receipt of an application and lesson plan.

(d) Upon approval of an application and lesson plan, the Department will send a certificate of approval to the provider by first class mail to the address listed on the Notary Public Education Provider Application or Amendment form.

(e) The certificate of approval will include all of the following:

(1) The name of the provider.

(2) The name of the approved course of study and whether it is basic education or continuing education.

(3) The date the course of study was approved by the Department.

(f) A provider may not alter or substitute the lesson plan reviewed and approved by the Department, unless the revisions are approved by the Department in accordance with § 167.96 (relating to lesson plan revisions).

(g) A provider is responsible for all employees, agents, instructors, contractors and subcontractors providing or involved in providing an approved course of study on behalf of the provider and the acts of the employees, agents, instructors, contractors and subcontractors will be deemed the acts of the provider.

(h) The certificate of approval will expire 3 years from the date of issuance. A provider may reapply for reapproval of a notary public course of study up to 90 calendar days before the expiration of the certificate of approval.

(i) A certificate of approval is nontransferable and may not be conveyed to another provider or applied to another course of study.

**§ 167.93. Lesson plan.**

(a) A lesson plan must meet all of the following requirements:

(1) The lesson plan must be based on the laws, regulations, procedures and ethics of ~~the~~ **this** Commonwealth concerning the functions and duties of a notary public.

- (2) The lesson plan must contain a table of contents. The pages of the lesson plan must be consecutively numbered.
- (3) The lesson plan must provide sufficient detail to enable the Department to evaluate the specific information to be presented and to determine the accuracy of the information to be presented.
- (4) The lesson plan must contain the procedures to establish the identity of a person physically attending a classroom course of study or virtually attending a course of study through interactive means to whom proof of completion may be issued in accordance with § 167.97 (relating to certificate of education).
- (5) The lesson plan must contain the procedures to ensure that the information contained in the certificate of education under § 167.97 cannot be viewed by any person other than the approved vendor issuing the certificate, an employee, agent, instructor, contractor or subcontractor of the approved vendor issuing the certificate, or the notary public applicant or notary public named in the certificate.
- (6) The lesson plan must contain the procedures to ensure that a person physically attending a classroom course of study or virtually attending a course of study through interactive means is present for the required time.
- (7) The lesson plan must include a schedule of the time allotted for all of the following:
- (i) Break periods, if any.
  - (ii) Each major subject area.
  - (iii) Each audio-visual aid to be used, if any.
  - (iv) Each student participation activity, if any.
  - (v) Completion, correction and discussion of any practice tests used and the method of correction to be used, if any.
  - (vi) If any movie or video is used for instruction, the lesson plan must include a brief synopsis of the information presented therein. The synopsis must detail the specific information presented by the movie or video. In addition, the provider shall include the movie or video in the materials presented to the Department for review.
- (b) Copies of any handout materials, workbooks, visuals aids, description of student participation exercises and practice tests used during the course of study must be submitted for approval with the lesson plan.
- (c) If the course provides for an evaluation by the students, time to complete the evaluation may not be included as part of the course of study.
- (d) All materials submitted to the Department under this section become the property of the Department and may be returned to the provider at the sole discretion of the Department.

**§ 167.94. Deficient application or lesson plan.**

- (a) If the Department determines that a Notary Public Education Provider Application or Amendment form is incomplete, or that a lesson plan does not satisfy the requirements of section 322 of the ~~act~~ Act (relating to examination, basic education and continuing education) or this chapter, the Department will issue a deficiency notice containing an itemized description of the deficiencies identified. The deficiency notice will be sent by first class mail to the provider's address listed on the Notary Public Education Provider Application or Amendment form or communicated in a manner agreed to by the Department and the provider.
- (b) A provider has 60 calendar days from the date on which the deficiency notice was sent or communicated by the Department to submit documentation to the Department curing the deficiencies identified in the deficiency notice.

(c) The Department may issue more than one deficiency notice to a provider regarding the same Notary Public Education Provider Application or Amendment form and lesson plan at any time during the review process.

(d) The Department may disapprove a Notary Public Education Provider Application or Amendment form if the deficiencies are not cured in accordance with subsection (b).

(e) The disapproval of a provider's application or amendment is subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. Chapter 5, Subchapter A and Chapter 7, Subchapter A (relating to practice and procedure of Commonwealth agencies; and judicial review of Commonwealth agency action).

**§ 167.95. Notification of changes of provider information.**

Within 30 calendar days of any changes in the information in the most recent application approved by the Department, a provider shall submit to the Department a Notary Public Education Provider Application or Amendment form identifying the changes. A provider may confirm receipt by the Department by phone or e-mail.

**§ 167.96. Lesson plan revisions.**

(a) A provider shall revise an approved lesson plan as necessary to ensure that the information provided in an approved course of study reflects a new law, regulation, court decision or administrative action.

(b) Proposed revisions to the contents or methods of instruction detailed in an approved lesson plan must be approved by the Department prior to implementing the proposed revisions in an approved course of study.

(c) To apply for a certificate of approval for a revised lesson plan, a provider shall submit a completed Notary Public Education Provider Application or Amendment form, the fee required by the Department, and a revised lesson plan in accordance with § 167.92 (relating to provider certificate of approval).

(d) Sections 167.92—167.94 apply to an initial and a revised lesson plan.

(e) Upon approval of a revised lesson plan, the Department will issue a certificate of approval in accordance with § 167.92.

(f) A provider shall follow the lesson plan corresponding to the most current certificate of approval.

**§ 167.97. Certificate of education.**

(a) A provider shall issue a certificate of education to a notary public applicant upon completion of an approved course of study.

(b) The certificate of education shall be issued by the provider to a notary public applicant only after the person has successfully completed the approved course of study.

(c) The certificate of education must consist of a certificate signed by a provider or an employee, agent, instructor, contractor or subcontractor of a provider, which contains all of the following information:

(1) The name of the education provider as it appears on the certificate of approval issued by the Department for the approved course of study.

(2) The name of the approved course of study and whether it is basic education or continuing education.

(3) The name of the notary public applicant who completed the approved course of study.

(4) The date the notary public applicant completed the approved course of study.

(5) The statement that the certificate of education is valid for a period of 6 months from the date of issuance.

(d) A provider shall submit revisions to the contents or appearance of the certificate of education to the Department for approval at least 30 calendar days prior to issuing the revised certificate to a notary public.

**§ 167.98. List of attendees.**

(a) A provider shall maintain a list of persons who attend each session of an approved course of study, whether they physically attend a classroom course of study or virtually attend a course of study offered through interactive means.

(b) The list of attendees must be maintained for 5 years from the date of issuance of the certificates of education corresponding to that session.

(c) The list of attendees must include all of the following:

(1) The name of the provider as listed in the certificate of approval for the approved course of study.

(2) The name of the instructor or instructors who taught the approved course of study.

(3) The date, time and location of the approved course of study.

(4) The names of all the attendees in alphabetical order by the last name of the attendee.

(d) A provider may not collect the Social Security numbers of any attendees.

(e) Upon request, a provider shall submit a list of attendees in the data format specified by the Department.

**§ 167.99. Representatives of the Department attending approved course of study.**

A provider shall permit representatives of the Department to attend any approved course of study, without prior notice and at no charge, for the purpose of observation, monitoring, auditing and investigating the instruction given.

**§ 167.100. Duty to respond to a written request from the Department.**

A provider shall respond in writing within 30 calendar days of receiving a written request for information from the Department. A written request may be sent to the mailing address, facsimile number or e-mail address listed on the most current Notary Public Education Provider Application or Amendment form.

**§ 167.101. Cancellation or delay of scheduled approved course of study.**

(a) Before charging any fees to a notary public applicant for an approved course of study, a provider shall disclose the refund policy of the provider.

(b) A provider shall refund all fees within 30 calendar days of a scheduled course date to any notary public applicant who registered to attend an approved course of study if one of the following occurs:

(1) An instructor fails to appear at the scheduled time, date or place of the approved course of study.

(2) An approved course of study is delayed in starting more than 15 minutes after the scheduled time, a notary public applicant immediately informs the provider of his request for a refund, and the notary public applicant leaves the approved course of study before its start.

(3) The provider does not hold a current certificate of approval for the course of study.

**§ 167.102. List of approved notary public education courses.**

(a) The Department will make a list of approved education courses available on the Department's web site. The approved course list will include all of the following information:

(1) Name of the approved course and whether it is approved for basic or continuing education.

(2) Name and contact information for the provider, including mailing address, telephone number, e-mail address and web site address.

(b) The Department will update the list of approved courses to add, delete or amend provider information that is filed in accordance with § 167.95 (relating to notification of changes of provider information) and add or delete courses that are approved or terminated in accordance with this subchapter.

**§ 167.103. Termination of certificate of approval.**

(a) The Department may terminate a certificate of approval upon any of the following grounds:

- (1) Violation of any of the provisions of the ~~act~~ **Act** or this chapter.
  - (2) Misrepresentation of the laws of ~~the~~ **this** Commonwealth concerning the duties and functions of a notary public.
  - (3) Deviation from the lesson plan for a course of study approved by the Department.
  - (4) Failure to respond to a request for information from the Department.
  - (5) Representations by the provider that any other product, goods or services provided by the provider are endorsed or recommended by the Department.
  - (6) Failure to prepare course attendees to pass the notary public examination so that an adequate pass rate is not maintained.
- (b) Termination of a certificate of approval is subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. Chapter 5, Subchapter A and Chapter 7, Subchapter A (relating to practice and procedure of Commonwealth agencies; and judicial review of Commonwealth agency action).

**§ 167.104. Cancellation of certificate of approval.**

(a) A provider may cancel its certificate of approval by submitting a written notice of cancellation to the Department. Unless otherwise stated in the notice of cancellation, the effective date of the cancellation of the certificate of approval is 30 calendar days after receipt of the notice of cancellation. The provider may confirm receipt by the Department by phone or e-mail.

(b) Within 30 calendar days of the effective date of a cancellation of a certificate of approval, a provider shall refund all fees to individuals who paid to take an approved course from a provider, if the course is scheduled after the effective date of the cancellation.

**Subchapter J. PROHIBITED ACTS AND SANCTIONS**

**Sec.**

**167.111. Offenses involving fraud, dishonesty or deceit.**

**167.112. Rebuttable presumption against appointment.**

**167.113. Reporting of crimes, disciplinary action and other matters.**

**167.114. Conduct providing the basis for disciplinary action.**

**167.115. Factors considered in disciplinary action.**

**167.116. Unauthorized practice of law.**

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**§ 167.111. Offenses involving fraud, dishonesty or deceit.**

(a) Conviction of, or acceptance of Accelerated Rehabilitative Disposition in resolution of, offenses involving a lack of honesty or elements of falsehood and fraud (*crimen falsi*) will be considered to be evidence of a lack of honesty, integrity, competence or reliability to act as a notary public, regardless of the jurisdiction in which the crimes were committed.

- (b) Under Commonwealth law, offenses involving fraud, dishonesty or deceit include the following:
- (1) Theft and related offenses, which includes all offenses defined in 18 Pa.C.S. Chapter 39, Subchapter B (relating to definition of offenses).
  - (2) Forgery and fraudulent practices, which includes all offenses defined in 18 Pa.C.S. Chapter 41 (relating to forgery and fraudulent practices).
  - (3) Bribery and related offenses, which includes all offenses defined in 18 Pa.C.S. Chapter 47 (relating to bribery and corrupt influence).
  - (4) Perjury or falsification in official matters and related offenses, which includes all offenses defined in 18 Pa.C.S. Chapter 49, Subchapter A (relating to perjury and falsification in official matters).
  - (5) Obstructing governmental operations and related offenses, which includes all offenses defined in 18 Pa.C.S. Chapter 51, Subchapter A (relating to definition of offenses generally).
  - (6) Abuse of office and related offenses, which includes all offenses defined in 18 Pa.C.S. Chapter 53 (relating to abuse of office).
  - (7) Criminal attempt if the underlying crime involves fraud, dishonesty or deceit. See 18 Pa.C.S. § 901 (relating to criminal attempt).
  - (8) Criminal solicitation if the underlying crime involves fraud, dishonesty or deceit. See 18 Pa.C.S. § 902 (relating to criminal solicitation).
  - (9) Criminal conspiracy if the underlying crime involves fraud, dishonesty or deceit. See 18 Pa.C.S. § 903 (relating to criminal conspiracy).
- (c) The Department will consider all convictions or comparable dispositions obtained in the courts of the United States, ~~the~~ ~~this~~ Commonwealth or any other state, territory, possession or country involving fraud, dishonesty or deceit.

**§ 167.112. Rebuttable presumption against appointment.**

- (a) Any person who has been convicted of or accepted Accelerated Rehabilitative Disposition (ARD) for any felony offense or any misdemeanor offense involving fraud, dishonesty or deceit as set forth in § 167.111 (relating to offenses involving fraud, dishonesty or deceit) within 5 years preceding the date of application for appointment is presumed ineligible for appointment as a notary public.
- (b) The presumption of ineligibility for appointment may be rebutted in extraordinary circumstances by a showing of clear and convincing evidence of the applicant's full rehabilitation. It is the intent of this provision that overcoming this presumption will occur only infrequently and in truly exceptional circumstances.
- (c) There is no presumption of ineligibility for conviction of or acceptance of ARD for a felony or an offense involving fraud, dishonesty or deceit more than 5 years preceding the date of application for appointment, but the conviction and related facts may be considered in determining whether the applicant has the requisite honesty, integrity, competence or reliability to act as a notary public.
- (d) The 5-year period will be measured from the date of the conviction or acceptance into ARD, rather than the date of the act which constituted the offense.
- (e) For the purposes of this subchapter, "conviction" and "convicted of" include a conviction after a bench or jury trial, a guilty plea, a plea of nolo contendere or a finding of not guilty due to insanity or of guilty but mentally ill. Acceptance of ARD is also included, regardless of whether the court considers it a conviction or a form of judgment without verdict.

**§ 167.113. Reporting of crimes, disciplinary action and other matters.**

- (a) A notary public shall notify the Department of a conviction of or acceptance of Accelerated Rehabilitative Disposition in resolution of a felony or a misdemeanor offense involving fraud, dishonesty

or deceit within 30 calendar days of the disposition or on the next application for appointment and commission, whichever is sooner.

(b) A notary public shall notify the Department of ~~disciplinary action in the nature of any~~ final order taken against the notary public's commission by the commissioning authority of another state, territory or country within 30 calendar days of receiving notice of the ~~disciplinary action final order~~ or on the next application for appointment and commission, whichever is sooner.

(c) A notary public shall notify the Department of a finding against, or admission of liability by, the notary public in any criminal, civil or administrative proceeding within 30 calendar days of conclusion of the legal proceeding or on the next application for appointment and commission, whichever is sooner.

(d) A notary public shall notify the Department of a finding by the Pennsylvania Bar Association or the courts of ~~the this~~ Commonwealth or the bar or courts of any other state or nation finding that the notary public has engaged in the unauthorized practice of law within 30 calendar days of conclusion of the proceeding or on the next application for appointment and commission, whichever is sooner.

§ 167.114. Conduct providing the basis for disciplinary action.

(a) In addition to the acts and omissions specified in section 323(a) of the ~~act Act~~ (relating to sanctions), the following acts or omissions demonstrate that an individual lacks the honesty, integrity, competence or reliability to act as a notary public:

(1) Notarizing his own signature or statement.

(2) Notarizing a spouse's signature or statement, when the notary public or the spouse has a direct or pecuniary interest in the record.

(3) Notarizing records in blank.

(4) Postdating or predating notarial acts.

(5) Altering a ~~document record~~ after it has been notarized.

(6) Issuing to the order of a State agency or ~~the this~~ Commonwealth a personal check without sufficient funds on deposit.

(7) Performing a notarial act within this Commonwealth when the ~~person individual~~ was not commissioned as a notary public or was otherwise not authorized to perform a notarial act.

(8) Performing a notarial act in another state under the authority of the notary public's Pennsylvania commission.

(9) Making a representation that the notary public has powers, qualifications, rights or privileges that the notary public does not have.

(10) Use of the term "notario," "notario publico," "notario publica" or any non-English equivalent term in a manner which misrepresents the authority of the notary public.

(11) Engaging in the unauthorized practice of any regulated profession, including law.

(12) Endorsing or promoting a product, service, contest or other offering by using the notary public's title or official stamp.

(13) Failure to require the physical presence of an individual ~~making a statement in or executing a signature on a record for whom a notarial act is performed.~~

(14) Failure to have personal knowledge or satisfactory evidence of the identity of an individual appearing before the notary public.

(15) Executing a notarial certificate that contains a statement known to the notary public to be false.

~~[INSERT HERE] Affixing his signature and official stamp to a blank notarial certificate, for use by another person.~~

~~[INSERT HERE] Knowingly allowing another person to use his stamping device.~~

(16) Using the notary public's official stamp for a purpose other than to perform a notarial act.

(17) Using another notary public's stamping device or embosser to perform a notarial act.

Commented [KB28]: Use of "person" instead of "individual" here is intentional, as RULONA defines "person" broadly.

(18) Relating to commercial protests as defined in 13 Pa.C.S. § 3505(b) (relating to evidence of dishonor), failure to identify the negotiable instrument, certify either that presentment has been made or, if not made, the reason why it was not made, and certify that the instrument has been dishonored by nonacceptance or nonpayment, or any combination of the above.

(19) Issuance of a certificate of dishonor of a negotiable instrument, also known as a protest of commercial paper as defined in 13 Pa.C.S. § 3505(b), that was owned or held for collection by a financial institution, trust company or investment company when the notary public was a party to the commercial paper in an individual capacity.

(20) Issuance of a certificate of dishonor of a negotiable instrument, also known as a protest of commercial paper as defined in 13 Pa.C.S. § 3505(b), of a noncommercial or other record that does not fit the definition of negotiable instrument as defined in 13 Pa.C.S. § 3104 (relating to negotiable instrument).

(21) Issuance of a certificate of dishonor of a negotiable instrument, also known as a protest of commercial paper as defined in 13 Pa.C.S. § 3505(b), in a manner not in accordance with 13 Pa.C.S. § 3505.

(22) Submission of the following types of records to the Department or Secretary of the Commonwealth in reply to correspondence from the Department or other government agency or initiating proceedings through the following record types:

(i) Conditional Acceptance, or a similar record purporting to "conditionally accept" presentment of an official record, and demanding proof of a list of claims to fully accept the official record.

(ii) Affidavit in Support of Conditional Acceptance, or a similar record purporting to attest to the facts of a record and signed by the same notary public who is attesting.

(iii) Notice of Dishonor, or a similar record purporting to give notice that a Conditional Acceptance has not been accepted by the government agency to which it was sent and thereby was dishonored.

(iv) Accepted for Value, or similar stamp or certificate purporting to accept for a disclosed or undisclosed value an official record sent to the notary public by the Department, the Secretary of the Commonwealth or other governmental agency. The certificate claims to establish an amount of money payable or accrued to the signor of the certificate.

(v) Notice of Protest, or a similar record purporting to be a Protest of Commercial Paper that has been dishonored, when the Commercial Paper is not, in fact, a negotiable instrument under 13 Pa.C.S. Division 3 (relating to negotiable instruments) and subject to the laws stated therein regarding dishonor and protest.

(vi) Other records attempting to apply 13 Pa.C.S. Division 3 to non-negotiable instruments or other records not included in the scope of Division 3.

(vii) Other record types purporting to follow the Uniform Commercial Code and not related to a filing under 13 Pa.C.S. Division 9 (relating to secured transactions).

#### § 167.115. Factors considered in disciplinary action.

When determining whether to deny an application or take disciplinary action against a notary public, the Department may consider a variety of factors including the following:

(1) Nature, number and severity of any acts, offenses, official misconduct or crimes under consideration.

(2) Evidence pertaining to the honesty, credibility, truthfulness and integrity of the applicant or notary public.

(3) Actual or potential monetary or other harm to the general public, group, individual or client.

(4) History of complaints received by the Department.

(5) Prior disciplinary record or warning from the Department.

(6) Evidence in mitigation.

- (7) Evidence in aggravation.
- (8) Occupational, vocational or professional license disciplinary record.
- (9) Evidence of rehabilitation, such as reference letters and proof of class attendance.
- (10) Criminal record
- (11) Reports from law enforcement agencies.
- (12) Willfulness.
- (13) Negligence.

§ 167.116. Unauthorized practice of law.

(a) In determining whether a notary public has assisted a person in drafting legal records, gave legal advice or is otherwise practicing law in violation of section 325 of the ~~act~~ Act (relating to prohibited acts), 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.

(b) Among the acts that constitute the practice of law 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.

(c) A person who represents himself in a legal matter will not be considered to have engaged in the unauthorized practice of law.

§ 167.117. Advertising.

~~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)(iii) of the act means that the entire statement "I am not an attorney" must be in at least 10-point type and the term "prominently" in section 325(d)(iii) of the act means that the entire statement "I am not an attorney" must be displayed in an area open and accessible to the public at the place of performance of the notarial act.~~

The entire statement required by section 325(d)(iii) of the Act (relating to prohibited acts) that includes the words "I am not an attorney..." must be in at least 10-point type and must be displayed in an area open and accessible to the public at the place of performance of the notarial act.