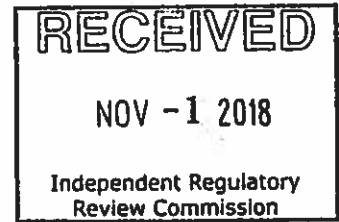


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October 29, 2018

Martha H. Brown, Assistant Counsel
Office of Chief Counsel, Department of State
401 North Street, Room 306
Harrisburg, PA 17120

Dear Martha,

On behalf of the Pennsylvania Association of Notaries (PAN), I am honored to submit our comments regarding the Department of State's Regulation No. 16-59 (Revised Uniform Law on Notarial Acts).

Since the beginning of our effort to update and modernize Pennsylvania notary law, through the drafting and enactment of the Revised Uniform Law on Notarial Acts, to the publication of regulations in the *Pennsylvania Bulletin*, PAN has relied on the Department's guidance and judgment in all matters concerning our members. We have been pleased to work cooperatively with the Department to keep our members educated and informed throughout the transition to the new notary law.

In return, our comments represent our careful attention to and respect for the Department's outstanding effort in organizing, executing, and finalizing this process. We congratulate you on reaching this important milestone.

Thank you for the opportunity to present our comments.

For the Association,

Marc L. Aronson
President and C.E.O.

Pennsylvania Association of Notaries
Comments on
Proposed Rulemaking
Bureau of Commissions, Elections and Legislation
16-59: Revised Uniform Law on Notarial Acts
October 29, 2018

General Comments

- References to the office of “recorder of deeds” should be removed, since the office does not exist in all Pennsylvania counties. Suggest using a more generic term.
- RULONA Section 302 – Definitions provides a definition of the term “record.” We suggest that any reference to a “document” (paper or electronic) in the regulations be changed to “record,” consistent with RULONA.
- References to the notary comparing a signature on a record to the signature of the individual on the identification presented are problematic, since the signer has already been identified, notaries are not trained as signature experts, and signing a record with a pen produces a different signature than signing an identification document with a signing pad. Also, in many cases, the signer is already signing in front of the notary. Further, the signature comparison does not come into play when the signer presents an identification without a signature, or when the signer is identified through personal knowledge. (See §167.61 through 64).
- The regulations specify that a notarial certificate should be attached to the record but do not specify where the certificate should be attached (for example, at the front of the record or at the back of the record).
- RULONA does not state that a notary is permitted to collect a clerical fee for notarizing a record. However, the regulations specify that any clerical fee the notary collects should be recorded separately. Neither RULONA nor the regulations define clerical fees.
- There is a difference in a type of personal knowledge based on social interaction (for example, neighbor, co-worker, or relative) and a type of personal knowledge based on a business relationship (for example, bank customer).

Section Comments

Section	Comment
161.2	Notary fees have not been raised since 2005. We support an increase to \$10 for notarial acts, and a commensurate increase in related fees (for example, the fee for additional names on acknowledgments, or per-page charges for noting a protest).
167.2	<p>Does this definition of "address" apply to journal entries, which do not require "street and number"? See 167.32(c) – <i>Address</i>. For purpose of journal entries, address means the city and state only.</p> <p>The definition of "address" also affects the notary's identification of the signer, in terms of the address on the identification document or the address known through personal knowledge of the signer.</p> <p>Request a definition for "office of record" (for example, "the address the Department has on record for the notary public," "appointment/commission address") or similar. Include a distinction between a work address/office and a home address/office.</p>
167.11	<p>167.11(a) requires a definition of what constitutes "practice" in this Commonwealth.</p> <p>167.11(b) requires a definition of what constitutes "an ongoing basis."</p>
167.14	<p>167.14(b) states that an applicant for renewal of appointment shall submit evidence of continuing education. Is it true that an applicant for renewal may take basic education OR continuing education prior to renewal of appointment?</p> <p>167.14(b) uses "renewal of appointment" and "reappointment" interchangeably. Recommend using one or the other term consistently throughout the regulations.</p> <p>167.14(d) ... legibly print OR TYPE his name immediately adjacent to his preferred signature ..." ... "and the notary public's full COMMISSIONED or APPOINTED name may be determined by looking at the signature."</p>

Section	Comment
167.15	<p>167.15(b) states, "The written examination" Would there be a need in the future to allow examinations that are not written but are delivered by another method?</p> <p>167.15(d) does not define a "scaled score."</p> <p>167.15(f) provides a specific Uniform Resource Locator (URL) to the Department's web site; we advise using a general statement that information is available on the Department's web site, in the event that the URL changes in the future.</p>
167.16	<p>167.16(c)(3) and (c) refer specifically to a "recorder of deeds," which is not an office in all Pennsylvania counties.</p>
167.18	<p>Applications for reappointment must SHOULD be filed at least 60 calendar days ...</p>
167.21	<p>167.21(a) does not show the "plain border" that must be on the stamp, enclosing the wording that is shown in the example.</p> <p>167.21(a)(1) and (2) seem to indicate that a period (.) should be included along with the words that are shown in quotation marks. Recommend placing the period outside the quotation marks, for clarity.</p> <p>167.21(a)(2) Should a comma (and spaces) be included after the notary public's name and before the words "Notary Public" on the official stamp? For example: "Jane Doe, Notary Public" Note: The regulations specify a "—" (and spaces) between the words "Commonwealth of Pennsylvania" and "Notary Seal." The "—" is not specified in the text of RULONA.</p> <p>167.21(c) and (d) specify that the stamp "must" be affixed "near the notary public's signature." On tangible records, there is often not enough space to place the official stamp without overlapping any writing.</p> <p>167.21(c) RULONA 318(a)(3) requires the notary public to "alter or deface the official stamp" (that is, render it unusable) upon commission expiration or resignation. However, the regulation in 167.21(c) states that a notary public may not alter or deface the stamp. Is (c) referring to the official stamping device, or the stamp impression, or both?</p>

Section	Comment
167.22	<p>167.22(c) Suggest rewording, "<u>FOR EXAMPLE, A</u> secure location includes in the notary public's sole possession ..." See also 167.35(a).</p> <p>167.22(d) specifies the "notary public or personal representative or guardian" must notify the Department of the loss or theft of an official stamp; however, the personal representative or guardian is not included in the instructions for notification in (d)(1) through (5) and in (c). See 167.35(b) and (c).</p>
167.31	<p>167.31(a)(4) concatenates "office of record" with "office address" to arrive at "office address of record." The notary's office of record may be a home address.</p> <p>167.31(a)(5) specifies that the journal shall be delivered to the "recorder of deeds," which is not an office in all Pennsylvania counties.</p>
167.32	<p>167.32(d) includes "—" as one of the notations permitted to indicate that the notary fee was waived or not charged. A "—" is not a clear, unambiguous notation.</p> <p>167.32(e) does not specify which address is being referred to (for example, customer's home address, customer's work address, address where the notarial act takes place). See 167.2 for the definition of "address."</p> <p>167.32(f)(1) and (2) could be made clearer if combined with the wording in 167.32(c). For example:</p> <p>(c) <i>Prohibited entries.</i> A journal may not contain any personal financial or identification information about the notary public's clients.</p> <p>(1) "Personal financial or identification information" means complete or unencrypted or unredacted:</p> <ul style="list-style-type: none"> (i) Social Security numbers (ii) Driver's license numbers (iii) Identification card numbers (iv) Account numbers (v) Financial account numbers (vi) Credit or debit card numbers (vii) Security codes, access codes, or passwords <p>(2) Terminal numbers for these types of numbers, including the last four digits of a Social Security number, may be used to clarify which individual or account was involved.</p> <p>(3) The term does not include publicly available information that is lawfully made available to the general public from Federal, State, or local government records.</p>

Section	Comment
167.33	167.33(d) specifies that each line or entry in the journal "must be consecutively numbered from the beginning to the end of the page." May all pages be numbered with the same sequence of line numbers (for example, 1 through 10) from the top to the bottom of the page?
167.34	167.34(f) refers to the office of recorder of deeds, which is not an office in all Pennsylvania counties.
167.35	<p>167.35(a) Suggest rewording, "FOR EXAMPLE, A secure location includes in the notary public's sole possession ..." See also 167.22(c).</p> <p>167.35(b) specifies the "notary public or personal representative or guardian" must notify the Department of the loss or theft of an official stamp; however, the personal representative or guardian is not included in the instructions for notification in (b)(1) through (5) and in (c).</p>
167.36	167.35(a) requires the notary public to maintain custody and control of the journal. Reference should be made in 167.36(a) that inspection of the journal should be conducted in the notary's presence.
167.41	167.41(c) contradicts (or disregards) the fact that applicants may sign the notary application in a fashion that includes initials alone, and then print their name in full to the right of the signature.
167.42	<p>167.42(d) refers to the office of recorder of deeds, which is not an office in all Pennsylvania counties.</p> <p>167.42(d) requires the notary to record the change of name at the recorder's office, where the signature may also be recorded at the same time. We believe this policy is unnecessary.</p> <p>167.43(a) states that the notary may continue to perform official acts in the name in which the notary was commissioned. A problem arises when the notary appears in the recorder's office to file the name change and is told to sign a new signature card with the new name. Some counties (for example, Allegheny County) do everything in one location and do not give the notary an option to not sign a new signature card. If the notary is not making the name change effective immediately (choosing the option of continuing to perform notarial acts in the name she was commissioned), and the county requires the notary to sign the card, does that mean the notary now needs to sign using the new name when acting as a notary? Or does the name on file with the Department supersede or override the county's records?</p>

Section	Comment
167.47	Consider the use in some states of drivers' licenses provided on smartphones, and whether the technology will be accepted in Pennsylvania in the future.
167.49	<p>167.49(a)(3)(iv) specifies a Social Security card which may have been signed many years ago, when the customer's signature was different.</p> <p>167.49(a)(3)(v) specifies a Medicare card which no longer contains a signature and has never included a photo.</p> <p>167.49(b)(1) states that an affidavit is required. Change "affidavit" to "verification on oath or affirmation" to be consistent.</p>
167.50	167.50 does not state any qualifications for an "interpreter," who may, for example, be a relative of the signer and have an interest in the transaction. Should an interpreter be an impartial third party, or qualified by training or licensing, to act as an interpreter for a signer?
167.52	167.52(a) states a notary may not "perform a notarial act" on a record containing blank spaces. We suggest a notary may not "place his or her signature or official stamp" on a record, to more clearly explain that a notary cannot notarize a blank record.
167.53	We suggest the following change of "and" to "or": "... for the increased compensation of the notary public for the amount of notary public fees collected and <u>OR</u> for reimbursement of the costs of obtaining a commission ..."
167.62	167.62(c) states that the signer must sign in the presence of the notary, but does not continue by stating that the notary must compare the signature on the record to the signature on the identification presented.
167.71	167.71(d) states that the notary should print their name immediately adjacent to a signature that is not legible or recognizable. We note that the notary's printed name already appears on the official stamp, eliminating the need to print the name.
167.93	167.93(a)(5) requires education certificates to be kept from view of any individual except the applicant. Nothing on the certificate is personal identifying information or not available as a public record. This requirement creates an unnecessary burden on the education providers.

Comment on the Use of Rubber Stamped Signatures

We note that there is no provision in RULONA or the proposed regulations that explicitly authorizes or prohibits the use of a rubber-stamped signature to sign a statement or record that is to be notarized. Individuals who may be physically unable to place a handwritten signature may be able to place—or direct the placement of—a stamped facsimile of their signature.*

RULONA Section 305 requires the notary to determine that “the signature on the record is the signature of the individual.” This means that unless the notary either 1) sees the individual sign, or 2) compares the signature on the statement or record with the signature on the individual’s identification, the notary cannot make the determination that the signature on the record is the individual’s signature.

§ 305. Requirements for certain notarial acts.

(a) Acknowledgments.--A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, all of the following:

- (1) The individual appearing before the notarial officer and making the acknowledgment has the identity claimed.
- (2) The signature on the record is the signature of the individual.

(b) Verifications.--A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, all of the following:

- (1) The individual appearing before the notarial officer and making the verification has the identity claimed.
- (2) The signature on the statement verified is the signature of the individual.

(c) Signatures.--A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, all of the following:

- (1) The individual appearing before the notarial officer and signing the record has the identity claimed.
- (2) The signature on the record is the signature of the individual.

This is supported by RULONA Section 308, authorizing a notarial officer to refuse to act if the notarial officer is not satisfied that the individual either 1) has the capacity to execute the record, or 2) the signature on the record or statement substantially conforms to the signature on the identification:

§ 308. Authority to refuse to perform notarial act.

(a) Specific refusal.--A notarial officer may refuse to perform a notarial act if the notarial officer is not satisfied that:

- (1) the individual executing the record is competent or has the capacity to execute the record;
- (2) the individual's signature is knowingly and voluntarily made;
- (3) the individual's signature on the record or statement substantially conforms to the signature on a form of identification used to determine the identity of the individual;

In addition, Regulations 167.61, 167.63 and 167.64 require the notary to "compare the signature on the record signed to the signature of the individual on the identification presented" when taking acknowledgments or verifications or witnessing signatures.

The argument that an individual cannot use a rubber-stamped signature is that ***the notary cannot make the determination that the signature made by the rubber stamp is actually (or substantially conforms to) the signature of the individual standing before the notary,*** as required by Sections 305, 308 and regulations 167.61 – 64. The individual may be using another person's rubber stamp to place a fraudulent signature.

We suggest that a rubber stamped signature is comparable to a "signature by mark," in which the individual places a tangible symbol (for example, an "X") on the record in the presence of witnesses. Whether the image created by the rubber stamp on the record is actually (or substantially conforms to) the signature the individual would make if he or she was able to make a signature is immaterial.

A section could be added to the regulations to establish rubber stamped signatures as equivalent to signatures by mark.

* Notice that we usually think of "capacity" as the individual's mental acuity to understand what he or she is doing. But "capacity" may also refer to the individual's physical ability, or the individual's position or authority. (The individual is "competent OR has the capacity to execute the record"). If an individual cannot physically sign a record or statement, the notary could reasonably refuse to perform the notarial act.