

REPORT OF MEETING OF
DRAFTING COMMITTEE TO REVISE
UNIFORM LAW ON NOTARIAL ACTS

February 27-28, 2009

The Drafting Committee to revise the Uniform Law on Notarial Acts met on February 27- 28, 2009. Present were Reporter Arthur Gaudio, Commissioners Patricia Fry, David Biklen, Peter Hamasaki, Edward Lowry, Raymond Pepe, Anita Ramasastry and Candace Zierdt. President Martha Walters, Executive Committee Chair Robert Stein, and Executive Director John Sebert each attended and participated in portions of the meeting. In addition, Commissioner James Wynn, Jr., Division Chair, and ABA Advisor James Wine were present and participated. Observers Tom Wrosch, Paul Clifford, Bettie Johnson, Mike Smith, Sheila Studdard, Ray Janicko, Marc Aronson, Kathleen Butler, Thomas Smedinghoff, John Levy, Bill Anderson, James Beech, Malcolm Morris, John Jones, Mark Ladd, and Carmelo Bramante also were present and participated in the meeting.

The meeting commenced with demonstrations of electronic technologies used for the notarization of electronic records. Representatives of Information Assurance Corporation, National Notary Association, Simplifile and World Wide Notary each demonstrated their products and answered questions for the balance of the morning.

The meeting then turned to the two drafts, one labeled the Bifurcated Draft, dealing separately with notarizations on paper and on electronic records, and the second labeled the Unified Draft, dealing with notarizations in a medium-neutral manner to the extent possible. In addition, there was an extended discussion with President Walters and Executive Committee Chair Stein concerning the scope of the subject matter of the drafts.

The following is a summary of the Committee's decisions and revision directions to the Reporter:

- Adopt the Unified Version as the drafting model for this revision; discontinue the Bifurcated Version.
- Section 2 – rename “stamp” to “official stamp”; stamp includes seal; consider how to include electronic information as a “stamp”; renumber.
- Section 2(4) – change definition of “identification credential” by adding foreign passport to (A), removing physical description in (B)(1), and removing “for use under this act” in (C); check passport recognitions/requirements of US Department of State.
- Subsection 2(14) – revise definition of “state” to include Indian tribe or nation, etc.
- Consider whether subsection 3(a), regarding authority to perform notarial acts, should be made part of another section or made into its own section.

- Subsection 3(b) – clarify by revising to “personal knowledge or satisfactory evidence of *the identify of an individual.*”
- Subsections 3(c) & (d) – clarify that the individual must appear before the notarial officer; track language in short forms in Section 14.
- Subsection 3(d) – clarify by removing “and named in the record on which the signature appears.”
- Subsection 4(a) – change “course of dealings” to “prior dealings.”
- Subsections 4(b)(1) & (2) – period is one year after expiration date of credential.
- Subsection 4(c) – clarify that if notarial officer is not satisfied, officer may refuse to perform notarial act; consider whether this provision should be moved to section 3.
- Section 6 – add Legislative Note regarding purpose of brackets.
- Remove subsection 6(a)(4) regarding individual authorized to administer oaths.
- Section 6 or 7– add Indian tribe or nation; consider whether it should be in Section 6 or 7.
- Subsection 8(a)(2) – remove “under 10 U.S.C. Section 1044a” and insert “in the military service performing duties under the authority of a military service.”
- Subsection 9(a) – “foreign nation *recognized by the United States Department of State*”; review other Uniform Acts for similar language.
- Add to section 9– stamp of foreign notary is recognized regardless of definition of stamp in Section 2 as long as it meets requirements of foreign nation in which performed.
- Subsections 9(a) & (c) – clarify the meaning of “multinational organization”.
- Subsection 10(a)(1) – signed in the manner on file with the regulatory authority.
- Subsection 10(a)(5) – delete “10 U.S.C. Section 1044a”; add “federal law.”
- Subsection 10(b) – delete “notarial officer’s”; add “notary public’s”; add “or a statement by a notarial officer other than a notary public that the officer has authority under state law.”
- Subsection 10(c)(4) – delete “designated”; add “as provided in Section 3 or other law.”
- Delete subsection 10(f); revise subsection 10(g) regarding necessity of affixing stamp to certificate and certificate to record.
- Section 11– define “stamping device” – device for affixing an official stamp or an electronic data tool.
- Subsection 11(a) – destruction of stamping device by personal representative includes family members.
- Section 12 – change references to notarial officers to notaries public.
- Section 12 – add subsection stating the journal is confidential and not viewable by other persons except by subpoena or by the commissioning officer.

- Section 12 – consider how to deal with a lost journal.
- Section 12 – if notary resigns commission or it is revoked or suspended, notary must send journal to commissioning officer or notify where it will be kept.
- Subsection 12(a) – journal to be retained for 10 years from the expiration of the commission under which the entry in the journal was made.
- Subsection 12(c)(5) – do not include passport or credential identifying number.
- Subsection 13(b) – remove “ensure compliance with Section 10(f) and (g); add “determine that it has received prior approval of the [commissioning officer or agency] under Section 20 or, if not previously approved, that it provides the assurances stated in Section 20.
- Subsection 15(a) – applies to all applications for a commission.
- Subsection 15(b)(1) through (5) continue as is; consider whether subsection 15(b)(6) should be moved to Section 16.
- Subsection 15(c), major revision as to bonds; how, when, and whether to include.
- Section 16 – revise; retain the brackets around the section to clarify that enactment is optional.
- Section 17 – applies to first commission sought after adoption of this act.
- Section 17 – failure to maintain journal is grounds for revocation.
- Section 17 – consider whether to insert subsection stating that notary public receives a license and is not a public officer. Note the recent case concerning whether notarizations are entitled to full faith and credit.
- Subsection 18(c) – the provisions regarding advertising apply to advertising in a language other than English.
- Subsection 19(a) – regulations should also be adopted to assure the trustworthiness of notaries public.
- Section 20 – commissioning officer will review the technology upon application and “payment of a fee.”
- Section 20 – commissioning officer will grant prior approval if the technology provides a satisfactory means of performing notarial acts on electronic documents and includes an assurance that any change or tampering with the record and its associated certificate are self-evident.
- Make various conforming and grammatical corrections throughout.